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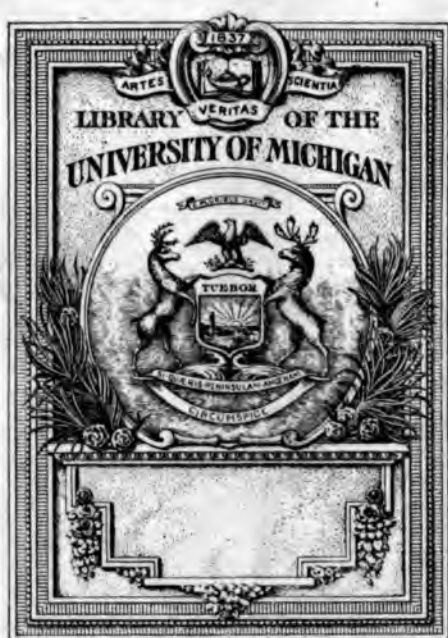
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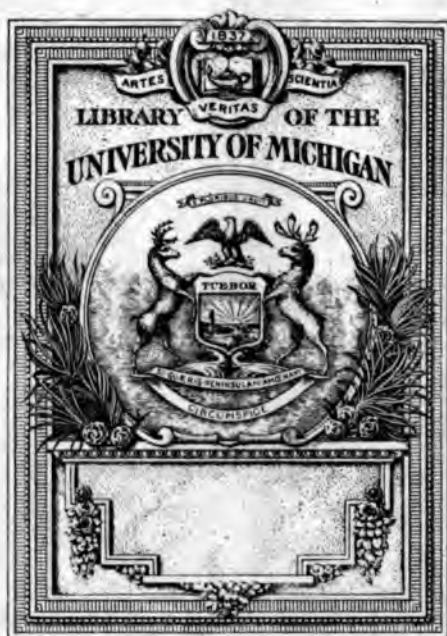
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INTRODUCTION

WITH the Commonwealth came an attempt to regulate fighting and seizure of ships at sea by Act of Parliament. The office of Lord High Admiral did not long survive the crown, and after the King's death, Parliament was the only authority that could legalise captures either by state or private ships of war. From the Revolution to the close of the Napoleonic war Acts of Parliament dealing with prize accompanied almost every war. Questions as to the legality of captures were further complicated by treaties, which from the seventeenth century, onwards, were made between England and most of the maritime powers. In the seventeenth century the common law courts claimed that the interpretation of Acts of Parliament was within their exclusive jurisdiction, and some Admiralty judges appear to have been reluctant to decide doubtful questions arising upon treaties (p. 124). The exclusive jurisdiction of the High Court of Admiralty to deal with prize was, however, gradually established, and since the Restoration no serious attempt to interfere with it by prohibitions or otherwise has been made. Amongst the prize sentences printed or mentioned below are condemnations of rebel ships (pp. 119, 227, 240, 251), ships seized for breach of the Acts prohibiting trade in foreign

bottoms with English colonies (pp. 14, 18), English or foreign ships trading with the enemy (pp. 137, 174), ships seized in the West Indies in retaliation for the action of Spain in refusing to trade or depredations by her guarda costas (pp. 45, 270, 273).

In the present volume no attempt has been made to summarize either the Acts of Parliament or the treaties which, since the death of Charles I, have dealt with prize matters. Their number and complexity prevents their being adequately dealt with except by an examination by the reader in each case of the Statute book and published collections of treaties.

The records of the Admiralty Court, to which attention has been drawn in Volume I, are voluminous for the period covered by this volume; and although its instance or civil business, owing to prohibitions from the common law courts from the time of Coke onwards, became insignificant, its prize business rapidly increased. The prize records are in a fair state of preservation, and the prize sentences, in particular, appear to have been carefully filed and preserved. They exist in vast numbers, and were at an early date bound in volumes and indexed. They are, however, disappointing as regards the light which it might have been expected they would throw upon the growth of prize law. Framed, as they are, in the same bare and technical terms, they contain little more than a bald statement of the condemnation or order for restitution of the ship or goods in dispute. The sentences of the Court of Delegates, or Lords of Appeal, unfortunately have not been nearly so well preserved. Many of them are in a state of decay, and many are missing.

Instructions to Privateers

In order to save space and avoid repetition these have been collected and printed consecutively at pp. 403 *seq.*, with some observations calling attention to the alterations and additions which were from time to time made in consequence of treaty engagements and the varying circumstances of the wars for which they were issued.

During the Commonwealth they were usually embodied in an Act of Parliament, and in the eighteenth century the substance of them was sometimes inserted in the prize Act which was usually passed at the beginning of each war. As the number of treaties, involving matters of prize, increased, the Instructions became more lengthy and complex ; otherwise the Instructions of 1756 differ little in essentials from those of 1585.

A few of the contemporary foreign prize regulations or instructions are given below (French, p. 312 ; Spanish, p. 395 ; Dutch, p. 396).

Naval Stores

During the Spanish war of Elizabeth's reign naval stores were treated by the English Admiralty as contraband ; and in the Dutch wars of Charles II they were requisitioned by the government upon payment of their value to the captor (p. 69). After this, some of the northern powers, who either as producers or carriers were interested in supplying to countries with which England was at war, entered into treaties by which a rule of 'free ship, free goods' was supposed to have been established. Although in these treaties contraband was excepted, and in some of them the contraband goods were specified, doubts arose

as to ship timber and also as to pitch and tar. For many years the English government was hampered by the language of these treaties. At first England appears to have contended that the treaties did not apply to the war in question ; afterwards she relied upon the exception of contraband, mitigating the loss necessarily falling upon neutrals by the device of compulsory sale. In both cases the neutral power affected was dissatisfied ; the quarrel lasted for more than a century, and continued after the date at which the present volume ends. Many of the documents printed below illustrate its progress.

Pillage

The claim of captors to the goods of the captured, asserted by the men of the Cinque Ports in 1299 (Vol. I, p. 50), was probably always partially acquiesced in by the crown. By custom, if not by law, the right of pillage in certain parts of the captured ship was exercised as late as the eighteenth century (p. 266) ; in 1662 it was expressly legalised by statute (13 Charles II, c. 9, s. 7), in 1664 by proclamation (p. 51). In practice the exercise of the right led to abuses ; it created difficulties, and was frequently complained of (pp. 65, 209, 266). A cargo of slaves carried above the gun deck and claimed as pillage was the subject of a long litigation (p. 95).

Sharing Prize

The first prize Act (4 Will. & Mary, c. 25), passed in 1692, contained provisions for the sharing of prize, and similar provisions appear in subsequent Acts. Before this shares were

apportioned by agreement or custom, or by the crown (p. 95, and Vol. I, pp. 5, 36, 241). Apportionment between joint captors was and still is made by the Admiralty Court (pp. 36, 307).

Prize Law

During the Commonwealth several Acts were passed authorising the issue of letters of marque or reprisal. Some of them contained clauses dealing with the law of prize, and a naval discipline Act (13 Chas. II, c. 9) passed shortly after the Restoration also deals with the subject. In 1665, and again in 1677, rules to be observed by the Admiralty Court in adjudicating upon prizes were issued by the King in Council (p. 53). Some of these were considered by Sir Leoline Jenkins to be at variance with the law of nations and the law of England, and he complains of the difficulty of his position as judge in having to administer them (p. 78). These rules, though not so expressed, were intended to apply to Scottish, as well as English, Admiralty courts (p. 84) ; whether the Scottish courts had an inherent jurisdiction in prize became a serious question after the Union. The first of the prize Acts, which were afterwards issued at the beginning of every war, was passed in 1692. Under these Acts captors took a statutory title to their prizes, after condemnation by the court, and this change in the law gave rise to some difficulties. Some of the Acts embody the Instructions to privateers, which, however, continued to be also issued by Order in Council. That prize law, and the law of nations upon which it is founded, is not stationary is shown by the fact that practices such as pillage, the carrying of prizes to a neutral

port, and the issue of letters of marque to foreign ships, the legality of which was formerly unquestioned, have all now become illegal. These changes in the law of nations were usually preceded by treaty arrangements upon the point in question.

The sale of prizes in a neutral country was common in early times, and the first objections to the practice were probably due partly to a difficulty experienced by the crown and the Lord Admiral in getting their tenths and fifteenths, and partly to a genuine desire to check piracy. Afterwards doubts arose as to its legality in view of treaty engagements and the law of nations. In 1746 the sale in Norway (a friend's country) of English ships captured by the French was complained of (p. 332), although in the previous year the Algerines had by treaty been empowered to sell their prizes at Gibraltar (p. 316).

The Prize Act of 1692 and subsequent Acts gave captors a statutory right to their prizes, a right which previously had depended upon the pleasure of the crown. This change gave rise to some difficulties, which probably had not been foreseen. In 1744, when the Dutch and English fleets were acting in concert, the crown was advised that, notwithstanding the recent prize Act, the Dutch were 'by the law of nations' entitled to share in prizes taken by the two fleets as joint captors (p. 307).

The independence of Admiralty judges, assumed in the report of the law officers forwarded to Frederick the Great (p. 355), and since vigorously asserted by Lord Stowell, is not altogether borne out by the records. In the past a judge of a distant Vice Admiralty court had not always the independence of Lord Stowell (pp. 41 note, 323, 345) ; even a judge of the High Court asked,

in 1745, the Lords to say whether pitch and tar in Swedish ships were contraband or not (p. 318).

The Salute

Documents relating to this subject are frequent throughout the seventeenth, and during the early part of the following century. The Duke of York's Instructions of 1673 (p. 86), like those of the Commonwealth, are peremptory in requiring its enforcement, if necessary, by shot of gun; and that they were obeyed is shown by Shovell's encounter with the Dane in 1694 (p. 165), and others. The question,—What are the British seas?—all important in this matter of the salute, was raised more than once, but in another connexion, by the use of those words in agreements made for cessation of hostilities in different wars, by which agreements captors were allowed to retain their prizes taken after peace had been declared, but before the news was deemed to have reached them; the date of the cessation varying according to the distance from England of the place of capture (pp. 231, 233).

The practice of saluting forts probably grew out of the salute to the flag; it is mentioned in 1727 (p. 263), but not in such a way as to imply that it was a novelty. The punctiliousness with which the giving and returning of salutes was treated is shown by many documents.

Rights and Duties of Neutrals

The protection due to a foreign belligerent in English neutral waters was in 1666 stretched to the extent of convoying her to and through the

Downs, so as to prevent her enemy, who was watching, from attacking her after she had sailed from Harwich (p. 116). In 1733 this precedent was relied upon by the owners of some Dutch ships, as entitling them to protection against an Algerine enemy ship, who was cleaning and tallowing at Plymouth, with a view to attacking the Dutchmen on their way down Channel (p. 118). In the previous century, during war with Holland, and again in 1721, the failure of Hamburg to protect some English ships in the Elbe was met by the issue of letters of reprisal; this appears to have had effect, for redress was obtained. The right of a belligerent to bring his prize to a neutral friend's harbour, and even to sell her there, appears to have been unquestioned before the eighteenth century (pp. 84, 140, 316, 329), but it gave rise to difficulties (pp. 59, 84), and was discontinued. Some of the earliest of the English Instructions to privateers required them to bring their prizes to a port in England or elsewhere, where they could be adjudicated upon by an English Court of Admiralty; but this was probably more for disciplinary and fiscal reasons than with any idea of conforming to a law of nations. In 1709 a claim made by a foreign power to adjudicate upon Englishmen's prizes brought to its harbours was declared to be unfounded and contrary to the law of nations (p. 213).

Vice Admiralty Courts

In 1630 Admiralty jurisdiction was granted to the Providence Island Company (Vol. I, p. 470), and Vice Admiralty courts were afterwards erected in many of the plantations. Of these the Jamaica court was probably the earliest;

for many years it was certainly the most important. There is at the Public Record Office one volume of its records ; probably others are in the island. The fact that in 1666 £50,000 was remitted to England on account of the King's and Lord Admiral's tenths and fifteenths of prizes condemned there (p. 67) shows that the amount of its business must have been considerable, as well as the frequent references to that court in the State Papers and elsewhere.

The prize jurisdiction of the Cinque Ports Admiralty, which was perhaps more ancient than that of the High Court itself, was finally extinguished in 1702 (p. 191) ; in Scotland and Ireland a prize jurisdiction survived until the last century. Until the Union the Scottish court continued to exercise its ancient prize jurisdiction, as being inherent in itself, and no Order in Council appears to have issued to call it into existence. At the close of the eighteenth century a conflict arose between the English and Scottish courts upon this matter, which was only terminated by an Act of Parliament (6 Geo. IV, c. 120, s. 57) which vested all prize jurisdiction in the High Court of Admiralty of England ; this again has by the Judicature Act been transferred to the High Court of Justice. The Irish courts were Vice Admiralties, created like the colonial courts by the crown.

In 1687 an Admiralty court, by what authority does not appear, was held on board ship in the Hoogly river (p. 121). The East India Company frequently petitioned for a grant of Admiralty jurisdiction, and a prize court in the East is mentioned in 1694 ; but no properly constituted Vice Admiralty court existed in India until late in the eighteenth century.

Rebel Prizes

Monmouth's and the Pretender's rebellions gave occasion for the Admiralty Court to pronounce upon this subject (pp. 119, 240, 251).

Commissions to capture Pirates

These do not seem to have been issued in such numbers as in Elizabethan and Stewart times. The East India Company and the Royal African Company are the only recipients mentioned in the present volume (pp. 112, 184, 282, 374). The arming of merchant ships, though probably almost universal, appears to have raised doubts as to its legality ; letters of marque and licences to capture pirates were perhaps obtained as much for defensive as offensive purposes (pp. 171, 172).

Letters of Marque and Reprisal

The issue of letters of reprisal to individuals in time of peace, to redress their own grievances, had almost ceased before the Restoration. In at least one treaty entered into by England before that date the practice had been discouraged by a provision which specified the circumstances under which alone the contracting powers should issue them. Privateering, however, in time of war continued to flourish, and the long series of Instructions for privateers (pp. 403-435) shows that efforts were made to regulate their proceedings, and to mitigate the evils that always accompanied this form of warfare. Service on board private ships was always more popular than service in

the Royal Navy, and the difficulty experienced in manning the latter seems never to trouble the former. At one time it was a condition of obtaining a letter of marque that a specified proportion of her crew should be landsmen (pp. 175, 417). In 1695 the Lords of the Admiralty advised that a letter of marque should not be issued to a trader (p. 171), but their objection was overruled and the commission issued. As stated above, East Indiamen commonly carried letters of marque. Examples of foreign letters of marque are given below, pp. 134, 135, 140, 291, 328; they are substantially in the same form as the English commissions. The French and some of the earlier English letters of marque authorise operations against the enemy on land as well as at sea. With the exception of the letters of reprisal against Hamburg mentioned above, and one issued in Charles II's reign, which was afterwards recalled, no letters of reprisal properly so called have been found of later date than those of the Commonwealth printed at pp. 3, 9. On the other hand, two of the first Acts passed by the Commonwealth Parliament authorised any English ship to capture any foreigner interfering with her (p. 10), or any ship aiding the Royalists, and in the same year (1650) foreign ships caught trading to the English plantations in America or the West Indies were declared good prize. The policy of this Act, carried further by the Navigation Act of Charles II, and by instructions to commanders in the West Indies to force a trade upon the Spaniards (p. 41), gave an impetus to irregular fighting in American seas, which culminated in the Spanish war of 1739. In connexion with this war the Spanish commission to a guarda costa (p. 270), the warrant to equip an Assiento ship (p. 236), and the docu-

ments at pp. 273, 277, 279, 283, 286 may be referred to. War in the East always had a character of its own, and the commission (p. 105) to assist the East India Company against the King of Bantam is the only one of its kind that has been found.

A proposal to issue blank commissions, to be used by Dutch ships under English colours, was in 1744 reported against by the judge of the Admiralty (p. 300). His objection was that security for good behaviour could not effectually be taken abroad. For the same reason the Lords, in 1746, disclaimed responsibility for the actions of privateers commissioned by colonial governors, whose bail was enforceable only in the colonial Admiralty courts, and not in England (p. 327).

Losses suffered from the Spaniards before and during the war of 1739, the operations of the Spanish guarda costas in the West Indies, and the failure of their Admiralty courts to give justice, occasioned the issue of exceptional orders by way of reprisal (pp. 273 *seq.*). The planters in Jamaica feared that they would suffer more than the Spaniards from this form of warfare, and it is doubtful whether they were ever executed. The seizure of Spanish ships by way of reprisal before war was declared occasioned the special commission for division of the prizes between the merchants and the captors mentioned at p. 296.

Trading with the Enemy

This was forbidden by 4 Will. III, c. 25, and offending ships were seized and condemned as prize (pp. 137, 199). The Navigation Acts were enforced in the same way (pp. 14, 18, 205).

Ransom

This practice appears to have grown up during the seventeenth century, and for some time payment of the ransom was enforced against the ship by the Admiralty Court at the instance of the hostage (pp. 180, 234). Its legality, at least in case of capture by a King's ship, was questioned in 1712 (p. 225), and in 1744 the practice was forbidden to all captors (p. 430). The form of a ransom bill is given at p. 222.

Stay of suspected Ships

In 1712 enquiry was ordered to be made as to a ship which, it was alleged, was being fitted out for the Czar of Russia (p. 225) ; it does not appear what the result was, but the government was advised that there was no power to stop her. On three occasions the East India Company applied for the stay of ships upon the ground that they would make trouble in the East, apparently with more success (pp. 196, 333). A ship fitted out by Lord Mordaunt in the seventeenth century was stayed upon similar grounds, and was afterwards bought into the Navy.

Convoy

At the beginning of the eighteenth century this subject was attracting considerable attention. The owners of English goods in Swedish ships, and the trade to Swedish ports in Russian hands were both calling for protection (pp. 219, 235). The unruliness of convoys, complained of in 1711 (p. 220), was afterwards dealt with by legislation.

Recapture from Pirates

In early times the Lord Admiral claimed pirate goods, which were granted to him by his patent (Vol. I, p. 271). In 1701 a pirate's booty was condemned as Admiralty droits (*infra*, p. 184), but a few years afterwards the Admiralty was advised that the original owners of goods found in pirates' hands were entitled to them upon payment of salvage (p. 250). Recaptures from Moors and Algerines always occasioned difficulties (Vol. I, p. 407 ; *infra*, p. 239).

Trial of Pirates

At the close of the seventeenth century, difficulties arose as to the trial of pirates captured in American and East Indian waters, the Act of Henry VIII requiring that they should be tried in England. In 1700 an Act (11 & 12 Will. III, c. 7) was passed enabling their trial abroad ; but so that the trial should be in or near some colony or plantation or factory, and a suggestion that they might be tried on the high sea was declared to be contrary to law (p. 252). The pirate Kidd was tried in England, and the sentence condemning his booty and the precept for his execution are printed below (pp. 184, 263). An order for a commission to try pirates abroad under the Act of William III is printed at p. 262.

Joint Operations with France against Pirates

A proposal to this effect by France in 1725 was reported against by the Lords of the Admiralty, mainly upon the ground that the assistance of French ships was not required, and that if accepted,

it would lead to difficulties in connexion with the disposition of goods captured in pirates' hands (p. 258).

Contraband: Corn and Provisions

Corn and provisions in neutral ships were seized in the war of 1689 and subsequent wars, to "distress the enemy," though doubt seems to have been felt as to the propriety or expediency of doing so. As in the case of naval stores, sale to the crown or otherwise at the port to which the ship was brought was either enforced or allowed (pp. 160, 211, 323, 331, 345, 418). In 1746 an order was sent to H.M. ships in the West Indies to detain such ships, even after they had been ordered by the court to be restored (p. 325); this, however, was speedily recalled.

British Seamen in Foreign Ships

The claim of England to take British seamen out of foreign ships was the subject of special instructions in 1576, 1640, 1643, 1673, and throughout the eighteenth century (Vol I, pp. 213, 513, 523, and *infra*, p. 86). In 1759 it led to an awkward incident in the case of a ship which appears to have been an English privateer under Prussian colours (p. 385).

Powers of the Crown

The power of the crown to affect by treaty the right of a British subject to claim his goods, brought to England in a foreign belligerent prize, was discussed in several cases (pp. 59, 111, 124); also its power to restore a friend's ship brought as prize into an English harbour by a

foreign belligerent (p. 84); also its power to alter or review a sentence of the Admiralty Court or of the Lords of Appeals (pp. 133, 204, 227). The crown appears to have exercised or assumed the right to intervene in a prize suit before sentence (pp. 134, 289); to award to allies a share in prizes captured by the joint forces (pp. 37, 307); and to deal with captures made before war declared, or by way of reprisal (pp. 296, 325).

*Report upon the Action of Frederick the Great
in Connexion with Reprisals and the Silesian Loan*

Although this document (p. 348) has recently been reprinted at length, together with much of the correspondence which accompanied it and which had not been before printed, it had not previously been very accessible, and its importance is perhaps a sufficient reason for reproducing it here. The original has been searched for without success, but there are contemporary prints of it, one of them, which was used by Sir Ernest Satow,¹ is stated to have been issued 'by authority.' That reproduced below is from *Collectanea Juridica*. It was circulated through the chancelleries of Europe, and has been generally accepted as an authoritative and exhaustive statement of the law and practice of the English Courts of Admiralty. That it was not acquiesced in by Frederick is well known, and France,² amongst other powers, protested against some of its law. A change in the European situation prevented the points in dispute coming to an issue.

¹ *The Silesian Loan and Frederick the Great*, by Rt. Hon. Ernest Satow. Oxford, Clarendon Press, 1915.

² *S.P. Foreign, Foreign Ministers, &c.*, 9, 20th April, 1753.



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DOCUMENTS

RELATING TO

LAW AND CUSTOM OF THE SEA

1649. Instructions to Richard Jeoferyes, captain of H.M.S. Thomas, from Sir Henry Stradlinge.—*Adm. Ct. Interrogatories* 15, No. 221.¹

As soon as I shall make loose my fore top sayle I shall desire you to gett your anchors on board, and sett sayle along with me for Sylley, where we are to land souldiers ; and in the way thether you are to use your utmost endeavour that we may keep company togeather. To which purpose, in the night, if it shall be dark or thick weather, I shall carry a light on the poop, which you are to follow. If it be dark and much wind, every shipp shall carry a light, and I shall carrie two. In case we should meet with crosse winds

¹ These are annexed to Jeoferyes' commission from Prince Rupert to command 'His Majesty's ship' the Thomas. Amongst the unarranged papers of the Admiralty Court is a similar commission for George Pattison to command H.M.S. Dover pinke. A commission from Charles R. for Job Forran to command the Job Forran or Fortune is in *Adm. Ct. Miscell.* 869, and another in the form of letters of marque to Job Contane to command the St. Peter of Waterford is in *Adm. Ct. Instance Papers*, 2.

or thicke weather, which should force us to keep the sea and sever us, if wee chance to meet by night, the shipp which is first hayld shall answere 'Charles the Second,' and the shipp which hayleth shall answere 'Yorke.' During the tyme wee shall bee upon this said imployment, you are to use your utmost indeavors for the preservation of his Majesty's honor, territories, and subjects, and to take into your possession all such ships and goods as you shall meet with belonging to any person or persons now in rebellion against the Kinge's Majestie, or which are any ways aydinge, assisting, or consenting unto that rebellion, or any of those rebells; Wherein you shall use all faire means to induce them to submitt to your authority, and to yield unto you their shipp and goods, and if that pre-vayl not, I doe by vertue of authority granted mee by his highness Prince Rupert, Admirall of his Majestie's navall forces, give you full power to fight with, sink, fier, or otherwise to impair and destroy them. If we chance to be separated, you shall send, or carrie along with you, all such prizes as you shall soe take into the harbour of Kinsale, putting into them such able and honest men as you will be responsible for. If wee chance to lose companie, you are to repaire back agayne to Kinsale within one and twentie dayes after the date hereof, and bring with you all such prizes as you shall not have opportunity to send in before, taking care that the hould be spiked downe, and that nothing be imbezzled or taken out untill they shall be brought into the harbour of Kinsale, and adjudged prize by His Majestie's Court of Admiralty, according to the tenor and custom in that behalfe. You are, as often as you can, to advertize his

Highnes Prince Rupert with your condition, and where you are, with a particular accompt of what prizes ships or goods you shall take, and to send all the letters and writings unto his highnes with all possible speede. And soe God bless you, and send us a prosperous voyage. From on board his Majestie's ship the James this 9th of Aprill 1649.

HEN. STRADLINGE.

1650, circa. Letter of reprisal against France for the loss of the *Mercury*.—*Adm. Ct. Letter of Marque Bonds* 214.

The keepers of the libertie of England by authoritie of Parliament, To all whom these presents shall come, Greeting. Whereas . . . [*After reciting at length the Act of 25th June 1649 authorising the issue of letters of reprisal to those who had suffered losses and had been unable to get redress, and that Gerraway had lost £9838 9s. 9d. by the capture of his ship, the Mercury, the commission proceeds*] . . . Know ye, therefore, that wee have licensed and authorized, and by these presents doe license and authorize the said William Gerraway, William Williams, and John Harris, to set forth to sea the said shippe called the William of London, and therewith by force of armes to set upon, apprehend, and take anie shippe or shipps, marchandizes, or goods of the French King, or anie of his subjects, upon the seas. Provided that such apprehension, seizure, or taking be not made upon or within anie ports, havens, or roads belonging to this Commonwealth, and in their possession, or to the said

French King, except the ship, merchandizes, and goods of the offenders, which shalbe there found ; And the said shippe or ships, merchandizes, and goods, being soe apprehended, seized, and taken, and brought into some port of this land, and thereof an inventarie taken, appraisement made, and judgment given in the said high Court of Admiraltie for the approbation of the same to be lawfull prize in manner and forme as aforesaid, to have and keep the same in his possession, or in the possession of his assigne or assignes, as true proprietors thereof ; and the same to sell and dispose of at his pleasure, according to the tenor and effect of the said judgment, and true intent and meaning thereof, without anie trouble or molestation whatsoever, saveing to such parties finding themselves aggrieved thereby their right of appeale. And it shalbe lawfull for anie person of this Commonwealth whatsoever, or anie other, either in his owne person to serve or otherwise beare charge or adventure, or in anie sort further or set forward the said enterprise by virtue of these reprisalls ; And allsoe that it shall be lawfull for all persons whatsoever, as well of this Commonwealth as any other person, to contract, bargain for, or buy the said shippe or ships, merchandizes, or goods soe apprehended, seized, and taken, adjudged for lawfull prize [and] ordered to be sold as perishable or for anie other cause seeming fitt to the said judges of the Admiraltie, without anie danger, losse, hinderance, trouble, or molestation whatsoever.

1650. Additional instructions unto Colonel Robert Blake, appointed Generell of the first fleet that is to go to the Southward.
S.P. Dom. Interr. I, 64, f. 231.

You shall remonstrate forth with the King of Portugall that those ships now in his ports, *de facto* commanded by Prince Rupert, are of a nature not capable of neutrality, for that they were part of the navy of England in the reall and actuall possession of the Parliament, armed, equipped, and furnished by them in their own ports, the mariners being also their owne servants, hired by them and placed in those ships in the immediate service of the Parliament ; from which service and from their duty the said marriners have perfidiously apostatized and made defection, and as fugitives and renegados have run away with the said ships, and in the same, as pyrats and sea robbers, they having exercised and made depredations and spoyles, and by adding to their number the ships by them taken were growing to a strength like to prove dangerous to the interruption, if not the destruction, of all trades and commerce ; that they are such fugitives and renegados as have no place in the world which they can pretend to be their owne, nor have any port of their owne whither to carry their prizes, and where to make shew of any forme of justice ; but whatever they can by rapine and depredations take from any whomsoever, like soe many thieves and pyrats, they trucke the same away where they can get admittance for that thieves trade, without bringing the same first to any adjudication, or makeing any such proceeding in courts of justice as the laws and customes of nations prescribe to

be done by all fleets of States or Princes, or any ships goeing to sea with lawfull commissions. Which being soe, it is a certain rule, *Quod piratæ et latrones, qui civitatem non faciunt jure gentium uti non possunt*, and being, as they are, *hostes humani generis*, may neither use the law of nations, nor are capable of protection from any Prince.

You shall signifie the first charge layd upon you by the Commonwealth of England to surprize or destroy those revolted ships wherever you find them. [*and that, even in Portuguese waters ; calling attention to the late treaty, which gives freedom of commerce, and does not forbid the entry of armed ships into Portuguese harbours. The Instructions continue :*]

You are to remonstrate to the King of Portugall that we have received notice that the same message or intimation was delivered in his name as if he had given order to his forts not to suffer any more English men of warre to come into the Bay of Weires. We cannot apprehend upon what ground that intimation should be given, or that message sent ; as well for that there is no clause in the treaty to forbid the ships of warre of the Commonwealth of England to come into that bay, especially where they have so just an occasion as this is, to fetch in their own ships out of the hands of those pyrats, as alsoe for that the said King, having first permitted those trecherous fugitive pirats to come in thither with these ships, part of the English navy which they ran away withall, it were against all right and justice to deny the Commonwealth of England that liberty to come in with their ships of warre which the said King hath already given to their fugitives and pirats. And therefore you are in the name of the Commonwealth of England to desire the

said King that the port be open and free for them, and that all their ships of warre may have liberty to come into the said Bay of Weires, or any other his ports, and returne, as they shall find occasion.

If the said King of Portugall shall refuse or neglect to doe you right in the premisses, then, for default of justice from him therein, wee referre you to your former instructions. Signed, &c.

Whitehall

20 April 1650.

1650. Instructions for Colonell Edward Popham, one of the Generalls of the fleet, and especially appointed to commaunde the second fleet that is ordered to go to the Southward.—*S.P. Dom. Interr.* I, 64, f. 255.

First [*With certain ships named, he is to pursue the Royalist ships to Lisbon, and to follow instructions given to Blake*].

Secondly [*He is to capture or destroy them, and all ships associating with them, they being all pirats that have infested the seas, and piratically spoiled trade*].

Thirdly, And whereas divers of the good people of this Commonwealth have of late susteyned great losses and dammages by haveing their ships and goods unduely seized, pillaged, surprized, and taken by diverse French ships and Frenchmen, subjects to the French king ; by which means the shipping of this nation hath been in some measure impaired, and the English trade lessened. And albeit all faire courses have been taken and ob-

served, according to the formes of Princes and States in amitie, in seeking and demanding redresse and reparation, yet none could be obteyned, but, on the contrary, severall of the French ships have unduly spoyled other English ships in the former manner ; soe that, according to the lawes and customes of nations, there ought to be droit de marque, and letters of reprisall are grantable. But in respect that many of the English soe spoyled are not able to undergoe the charge of setting forth ships of their owne to make seizures by such letters of marque ; and for that by the law used amongst nations any state may in such case cause justice to be executed by their owne immediate officers and ministers immediately where they finde it requisite ; You shall therefore, as in the way and execution of justice, seize, arrest, surprize, and deteyne such ships and vessells of the said French king or any of his subjects, as you shall thinke fit, together with the tackle, apparell, ordnance, and ammunition, and all and singular the money, goods, wares, and merchandizes therein, wheresoever the same shall be met with upon the seas ; and the same soe seized, arrested, or surprized, shall secure and keepe in your custody without any manner of wasting or imbezzilling the same, or any part thereof, untill the Parliament shall declare their further resolution concerning the same. And to the end that such ships that you shall so seize may be proceeded against in the Court of Admiralty, according to the rules and formes of justice, if the Parliament shall soe resolve, you shall carefully preserve all cock-quetts, bills of lading, commissions, and all other writings whatsoever that shall be found on board such French ships, and shall send the same to the said Admiralty court, as alsoe two or three of the

principall of every such French ship, to be examined in the same court, if the Parliament shall soe direct, that upon due and regular proceedings right and justice may be done therein.

[*The Instructions (Arts. 6 and 7) go on to direct that if the entry of the Parliament ships into Portuguese ports is opposed, then Portuguese ships and goods are to be seized and treated in like manner as French ships.*]

1651. Warrant to issue letters of reprisal to Edward Gibbons against France, for loss suffered in New England at the hands of De Aulney.—*Adm. Ct. Records.*¹

Whereas Edward Gibbons, residing in New England, hath beene much damnified, and suffered great losse by meanes of one Monsieur De Aulney, a Frenchman, who hath by force taken, and still keepeth in possession a fort or place of trade with the natives of that countrey, which was made over to the said Gibbons by Monsieur Latore, for the satisfying of a debt of about three thousand pounds sterling; Wee have granted to the said Edward Gibbons letters of marque against the French for the obteyning of satisfaction for his said losses soe susteyned, together with interest, costs, and charges, and other dammages as he shall expend for the recovery thereof; And doe hereby authorise

¹ The old reference was *Miscell. Bundles*, Ser. II, bdle. 246; but these bundles are under rearrangement. De Aulney had, with some bloodshed, captured the fort, which was on St. John's river; see *Royal Historical Society Transactions*, xvi, 95.

you to issue the same by way of commission under the great seal of the high court of Admiralty, according to the articles agreed on by this Councill, and remayning with you. Given at the Councill of State, at Whitehall, this 30th of January 1650.

[Signed by John Bradshaw, and addressed to the judges of the Admiralty.]

1651. Note as to commissions to privateers issued by Parliament.

Commissions issued by Parliament in 1651 to the *Helena*, the *George*, and other ships recite (1) an Act of 17 April 1649 authorising the capture of ships belonging to rebels against Parliament, foreign or English ships commissioned by Charles Stuart or Prince Rupert, ships with contraband on board bound to or from England or Zeeland, or any place in hostility to Parliament, and ships and goods of Irish rebels; (2) an Act of 13 April 1650, which, after reciting that foreign ships had taken upon them to visit and search English ships, and under colour thereof had spoiled and seized them, authorised the issue of commissions enabling English ships to deny and make defence against any such visitation, and to capture any ship demanding the right to visit them, or in any other way hindering them in their trading or attempting to capture or spoil them; (3) an Act of 3 Oct. 1650 authorising the capture of ships belonging to or trading with rebels in Barbados, Bermuda, Virginia, or Antigua, such trading being declared to be against the law of nations; (4) an Act of 1 Dec. 1650 authorising the capture of ships with contraband on board for Scotland. Examples of these commissions, or letters of marque, are in *Adm. Ct. Letter of Marque Bonds*, 225, f. 102, seq.

1651. Summary of report of the Admiralty judges as to the recompense to be made to the owners of English ships seized at Lisbon for the service of the State, and as to their sharing in prizes captured.—*S.P. Dom. Interr.* Vol. xv, No. 38.

We have considered the petition of the owners and masters of the nine ships bound to Brazil from Lisbon, and stayed by Col. Blake for the service of the fleet, together with Col. Popham's certificate as to the facts, and the evidence thereon given in the Admiralty Court. The ships were stayed by Blake in order to strengthen himself against the French, who were reported to be coming to Lisbon to join forces with Rupert against him. Upon Popham's arrival at Lisbon with power to seize Portuguese ships and goods, the goods on board the ships in question were seized, and the officers and mariners, except the pursers and such as were known to be well affected, were taken out and put into other ships of the fleet, and new commanders substituted. This at first made us doubtful of their fidelity to the Parliament, and therefore we put them to proof of their good affection and of their service at that time. By their proofs it was shewn that they were well affected and willing to do their best service in the fleet. Blake also certifies that the masters were not removed from their commands upon any charge, but upon general and prudential grounds.

The only question therefore is, what allowance is to be made to them for the use of their ships. We conceive that they ought to have the same pay and allowance as other ships ready victualled taken up for the fleet, with consideration for victuals taken out of them to supply other ships; and that freight should run from the time of their being dismissed from the fleet with Portuguese goods until the time of their unloading at this port, according to the rate they were to have from the Portuguese.

' And whereas, by the law, if a forrainer's shipp,

who is in amitie with this Commonwealth, be taken laden with goods of an enimie to this Commonwealth, the same freight is to be allowed to the owners of the shipp out of the goods of the enimie seized as the enimie by contract should have payd ; and that because *succedit victor in locum victi, et possessor quilibet tenetur hypothecariâ*, and all the goods are hypothecated and pawned for the freight. Wee therefore humbly conceive some consideration likewise ought to be had of the freight from the tyme of their lading until the tyme of their stay ; which, ¹ if they had not been laden, or laden with goods not seizable, and so dismissed after the tyme of their service to proceed in their voyages, they ought to have had pay only for the tyme of their service.

As for their demands of their share in the prizes taken from the French in their coming to port, we do not find that by any Act any share in prizes is allowed to any but the captains of ships of the Parliament and their mariners, and to such as have commissions for private men of war and their mariners.²

WILLIAM CLERK, JOHN EXTON, WILLIAM STEPHENS.

1651. Sentence condemning French goods.
Adm. Ct. Prize³ Sentences 2, No. 33.

. . . Therefore wee, the said William Clcrke and John Exton . . . [*in common form*] . . . doe pronounce, decree, sentence, and adjudge all the said goods, wares, and merchandizes soe taken in the said ship, the Joseph, to bee the goods, wares, and merchandizes of the subjects of the said French kinge, and that they belonged to such French subjects att the tyme of the said

¹ *Sic.* Qy. though.

² Except the paragraph within inverted commas, which is printed in full, only the substance of the report is given.

³ This series is here, and throughout, referred to as ' Prize Sentences.'

surprizall ; and that they were lawfully surprized by vertue of the said letters of marque and reprizall, and according to the true intent and meaninge thereof, and that the same ought to bee decreed and adjudged to the said James Pickeringe and company. And wee doe decree sentence, and finally adjudge the said goods, wares, and merchandizes, and the lawfull and absolute proprietie therein, to the said James Pickeringe and company, to be sould or disposed of by them to and for their owne uses and behoofe, by force and vertue of the said letters of marque, and for and towards the losses and dammages aforesaid by them susteyned by the said illegall and undue proceedings of the French. And we doe likewise order, decree, and adjudge the possession of the said goods, wares, and merchandizes to the said James Pickeringe and company, and pronounce and adjudge them to bee the true and rightfull possessors and owners thereof, to all intents, constructions, and purposes by this our finall decree and sentence diffinitive, which wee pronounce, give, and publishe by these presents.

Walter Walker.

WILLIAM CLERKE.
JOH. EXTON.¹

1652. Opinion of the Admiralty judges as to the issue of letters of marque.—*S.P. Dom. Interr.* Vol. xxiv, No. 87 I.

The substance of the opinion is as follows: That before letters of marque and reprisal are issued, formal

¹ During the Commonwealth there were two or more Admiralty judges, and the proceedings of the court were in English.

demand of reparation to the injured subject ought to be made by one prince to the other ; but not where war has already broken out. Proof of loss must always be made, except where, after the lapse of ten years or thereabouts, reparation or composition is presumed. Commissions to private men of war are of two kinds ; some are founded upon Act of Parliament forbidding trade to English colonies, or authorising the capture of Royalist ships, in which case the Act gives the whole of his prize to the captor, except one tenth thereof reserved for the State. Others may be issued, without proof of loss to individuals, against the Dutch, for redress of public losses, and to curb their insolences. Here the Council may award to the captor such part of their prize as it pleases ; the practice has been to award one half in such cases.

1652. Sentence condemning a Dutch ship
for trading with the English West
Indies.—*Adm. Ct. Prize Sentences 2,*
No. 97.

. . . . Wee, the said judges . . . [*in common form*] . . . doe pronounce, decree, and adjudge the said ship, the Elsabeth of Flushing, and all the goods therein surprized, to bee within the true intent and meaneinge of the said Acte of Parliament, and to have incurred the penalty of forfeiture and confiscation in the said Acte ordained, and doe declare and finally sentence and adjudge the said shipp, the Elizabeth, and her tackle, apparel, furniture, and all the goods therein whatsoever, to have been well taken by the said Captaine Wrexall with the said shipp, the Browne Bull, and to be good and lawfull prize to the said Henry Hazard and company, setters forth of the said shipp, the Browne Bull, and in

such sort as in and by the said Act is ordained, one tenth part of the whole being first taken out to be disposed of by the Counsell of State for such uses as the said Parliament shall direct and appoynt. And wee, the said judges, doe condemne the said shipp, the Elisabeth of Flushing, with her tackle and furniture, and all and singular the goods therein, for good and lawfull prize to the said Henry Hazard and company, being the setters forth of the said shipp, the Browne Bull, they first payinge and allowinge the full tenth part of the whole, (which we condemne them to doe), to be disposed of as afore-said by the Counsell of State . . . [*Cancellation of Hazard's bond to bring into court the value of the ship and cargo, in case the capture should be found to be illegal.*]

Walter Walker.
William Turner.

WILLIAM CLERK.
JOHN EXTON.

1652. Extracts from the register of the secret resolutions of the States General, and consequent instructions to De Witt to convoy ships with silver on board from Spain for Holland.—*Adm. Ct. Instance Papers* 5.

There being produced the second time in the Assembly the report of the Lords Verbolt and others, commissioners of their High and Mighty Lordships for the sea affairs, in pursuance of their resolution of the 26 currant, they have perused and examined the letter of the College of Admiralty at Amsterdam, written from thence the 24 of the same moneth, and together a petition

signed by a good number of merchants of the same towne, in the behalfe of themselves and others likewise interested in the Spanish trade, concerning the security and the bringing in salvo the ships and silver which is expected out of Spayne, that the commander of the fleet of this State, sayling to the end of the Channel may be commanded to convoy the East India ships, as well as the Hamburger ships, laden with silver, in case he should refuse to doe it. Whereupon, after deliberation held, it is resolved that there shall be a letter sent to the Vice Admirall de Witt as likewise to the Vice Admirall de Ruyter, that in case they in the said Channell should meet any East India shippes or Hamburgers coming as aforesaid, laden with silver from Spayne, they shall convoy those ships at this conjuncture of tyme, viz the said East India ships to the coast of Flanders, and the other unto this countrey, although it be not according to their former instructions.

Upon what hath been presented by the Lords Deputys of the Province of Holland in the Assembly, after deliberation had, it is resolved that in delucidation of their High and Mighty Lordshipps' resolution of the 31st of August last past, doe declare by these that the Vice Admirall de Witt, and the Vice Commander De Ruyter, shall bee writt unto that the shipps coming from Spaine towards these United Netherlands, and expected home, shall nott oneley bee protected against the English, but against all other whomsoever who might offer to damnifie them (*Dated 15th Sept. 1652*).

Faythfull and well beloved. That which wee have resolved today concerning the protecting

and defending of these ships bound from Spaine towards these United Netherlands, which are expected, you will see out of the enclosed extract of our resolutions, according to the contents thereof, you are to govern yourselves. Wherewith concluding, wee recommend you to God's holy protection. In the Hague, 15 September 1652.¹

1653. Sentence condemning, as French prize, wines on board a Hamburg ship.
Adm. Ct. Prize Sentences 5, No. 10.

. . . Therefore wee, the said William Stephens, doctor of lawes, and Nathaniel Bacon, judge of the said court, having fully and maturely considered of the whole processe and nature and meritts of the cause, and of all the proofes made herein; And wee, having called upon God to enable us to give right and true judgment, doe pronounce, sentence, and adjudge that Frenchmen, and subjects of the French kinge were the true and lawfull owners and proprietors of all and singular the wines and goods seized in the said shippe, to which noe clayme is made, and that all the said wines and goods so seized as aforesaid, which are not claymed; were duelye and lawfully surprized and seized, accordinge to the instructions and orders of Parliament, and accordinge to the true intent and meaninge thereof; And that the same ought to be decreed and adjudged to be good and lawfull reprizalls to the keepers of the Libertie of England by

¹ A contemporary translation from Dutch originals, which are enclosed in a long and interesting letter from Blake to the Council of State. Some of these 'Silver ships' were captured by Blake and condemned as Dutch prize.

authoritie of Parliament, towards satisfaction of the losses and dammages done by the French to the English as aforesaid; And accordingly for good and lawfull reprizalls wee doe decree, sentence, and finally adjudge all and singular the wines and other [goods] seized in the said ship, which are not claymed, by this our finall decree and sentence diffinitive, which wee doe pronounce, give, and publish, by these presents.

The goods seized in the said shippe which are excepted from condemnation by this sentence are as followeth: [*describing certain wines claimed by merchants.*]

Walter Walker.

WM. STEPHENS.
NATHL. BACON.

1653. Sentence condemning a Dutch ship trading to the West Indies contrary to the Act of 3rd Oct. 1650.—*Adm. Ct. Prize Sentences* 5, No. 16.

In the name of God, Amen. Wee William Stephens, doctor of lawes, and Nathaniel Bacon, esquire . . . [*in common form*] . . . Forasmuch as wee, the said judges, having seene and perused the Act of Parliament dated the 3rd of October 1650, intituled An Act prohibiting trade att the Barbadoes, Virginia, Bermundas, and Antego, whereby, for the reasons in that Act conteyned, itt is, amongst other things, enacted that, after due publication of that Act made, to the end that none may justly pretend ignorance, it should and might be lawfull to any the fleete or shippes sent forth or imployed by the Parliament, or any

private men of warr or shipps to be allowed or approved in that behalfe by the immediate power of Parliament, to seize, surprize, and take all and all manner of shipps, vessells, and goods, of what nature or kind soever, belonging to all persons whatsoever, whether foreigners or others, or of what nation soever, that shalbe found or mett withall tradeinge or goeing to trade, or comeinge from tradeinge with the rebells therein mentioned, or in or att the said island of Barbadoes, Bermudas, Virginia, or Antego aforesaid, or any part or parts thereof ; And by which Act the Parliament, for the reasons there sett forth, did further forbidd and prohibitt all ships of any foreigne nation whatsoever to come to, or trade in, or traffique with any of the English plantations in America or any islands, ports, or places thereof, which are planted, or in the possession of the people of this Commonwealth, without licence first had and obteyned from the Parliament or Councell of State ; And did further enact, ordain, and declare, that from and after the 20th day of November, 1650, it should and might be lawfull for any shipp or shipps sett forth by the Parliament, or allowed by the Parliament, or Councell of State, to seize, take, and surprize any shipp or shipps of any forreigne nation whatsoever that should be outward bound to any of the said plantations, ports, or places, without such licence as aforesaid ; And from and after the 1st of January, 1650, it should and might be lawfull for such shipps sett forth and allowed as aforesaid to seize, take, and surprize any forreigne shipps that should be found tradeinge att any of the said plantations or lands and places aforesaid without such licence as aforesaid ; And from and after the 20th day of March, 1650, itt should and might be lawfull

for any of the Parliament shippes, or any private men of warr allowed of by the Parliament, or Councill of State for the tyme being, to seize, take, and surprize any shipp or shippes that should be comeinge from or had traded att any part of the plantations aforesaid without such licence as aforesaid; And all such shippes soe taken, with all goods, tackle, and furniture, to send into some port of this Commonwealth, to be proceeded against, and adjudged in the court of Admiralty, as in the said Act is ordered and appointed. And wee, having seene the instructions and commission granted by authority of Parliament for equippinge, armeinge, and setting forth to sea a squadron of the Parliament's shippes, under command of the said Sir George Ayscue, knight, commander in chiefe of the said squadron, for the seizeinge and takeinge of shippes and prizes in all the cases mentioned in the said Act; And wee, the said judges, haveinge seene and perused the examinations, depositions, and proofes made in this cause, and upon full and deliberate consideration thereof, findeinge it fully and cleerely proved that the said shipp, the Hope of Amsterdam, and all her ladeinge, was in the year 1651 taken and seized by the said squadron of the Parliament's fleete under the command of Sir George Ayscue, knight, att a place or port called Carlisle Bay in the Barbadoes, whilst she was in trade, and had traded there, contrary to the said Act of the 3rd of October, 1650, aforesaid; Wee therefore, haveinge called upon God to inable us to doe justice, and give right judgment therein, doe pronounce, decree, and adjudge the said ship, the Hope of Amsterdam, and all the goods therein surprized, to be within the true intent and meaneinge of the said Act of Parlia-

ment, and to have incurred the penalty of forfeiture and confiscation in the said Act ordained; And wee doe declare, finally sentence and adjudge the said shipp, the Hope of Amsterdam, and her tackle and furniture, and all the goods therein whatsoever, to have been well taken by the said Parliament shipp, and to be good and lawful prize to the Keepers of the Libertie of England by authoritie of Parliament, accordinge to the said Act; And accordingly for good prize to the Keepers of the Libertie of England by authoritie of Parliament wee doe condemn, sentence, and adjudge the said shipp, the Hope of Amsterdam, with her tackle and furniture, and all and singuler the goods, wares, and merchandizes therein seized, by this our finall decree, which wee doe give and publish by these presents.

Walter Walker.

WM. STEPHENS.
NATL. BACON.

1653. Sentence condemning a Dutch prize.
Adm. Ct. Prize Sentences 5, No 2.

. . . Therefore wee, the said judges of the said court . . . [*in common form*] . . . doe pronounce, decree, sentence, and adjudge that the subjects of the States of the United Provinces were the true and lawfull owners and proprietors of the said shippe, the King David of Enchusen, and her tackle and furniture, and all the goods and ladinge seized in her; And that the said shippe and all her ladinge soe seized as aforesaid were duly and lawfully surprized and seized; And that, according to the order of the Councill of State made by the authoritie of Parliament,

and, according to the true intent and meaning thereof, the same ought to be decreed and adjudged to be good and lawfull reprisals to the Keepers of the libertie of England by authoritie of Parliament, towards satisfaction of the losses and damages done by the States of the United Provinces and their subjects to the English as aforesaid ; And accordingly for good and lawfull reprisals wee doe decree, sentence, and finally adjudge the said shippe, the King David of Enchusen, and all the premises and ladinge aforementioned, soe seized as aforesaid, by this our finall decree and sentence diffinitive, which wee doe pronounce, give, and publish by these presents.

Walter Walker.

JOHN EXTON.

WILLIAM STEPHENS.

1654. Nomination of Edward Bushell and Alexander Bence as commissioners to receive certain moneys charged by the King of Portugal with the payment of damages suffered by Englishmen in respect of their ships and goods seized by Princes Rupert and Maurice, and carried by them to Portugal.—*Add. Ch.* 7924.

This is a long and confused Latin document, with a faulty English translation, signed 'Oliver P.' It begins with long recitals stating that, by a convention of 29th Dec. 1652, it had been agreed that compensation should be made by the King of Portugal ; that disputes had arisen in executing the convention ; that two English and two Portuguese arbitrators had been nominated to settle these disputes, with power to the Lord Protector to appoint an umpire in case of difference ; and that

a moiety of the customs, payable to the King of Portugal upon English goods to be carried to Portugal, should be handed over to persons to be nominated by the Lord Protector, to provide for the payment of the sum to be awarded by the arbitration. The document nominates, accordingly, Bushell and Bence as receivers of the moiety, with power to appoint deputies, and to enforce payment.

1655. Order for reprisals against Spain.—
Adm. Ct. Letter of Marque Bonds 227,
f. 2.

After reciting that the King of Spain had, contrary to the treaty of 1630, seized English ships, and that he sought to justify his action by complaining of an English fleet being sent to the West Indies, although it was notorious that Spaniards had been most cruel and blood-thirsty there to Englishmen, the order proceeds :

. . . His Highnes, upon full debate and advise with his Councell, findeth himself obliged to use all just and lawfull remedies against those hostile and exorbitant courses, and hath found meet to grant, and doeth by and with the advise of his Councell hereby grant a general embargo and seizure of and upon all the shippes and goods of and belonging to the said King of Spain, or any of his subjects, wheresoever they shall or may be found within the dominions or territories of this Commonwealth. And his said Highnes, by and with the advise of his said Councell, doeth further alsoe by these presents grant, (as the same are in this case by the law of nations granteable) universall reprisalls against all and all manner of shippes and goods whatsoever belonging to th said the King of Spaine, and all and every his subjects whatsoever, both of Spaine and Flanders,

and all other his dominions and territories whatsoever ; And doth hereby give full licence and authority that the said shippes and goods, and all shippes and goods whatsoever, belonging to the said king or his subjects, and every of them, may bee surprized and seized, either at sea or in ports or on land, and wheresoever they may be found, surprized, or seized, by the fleet and shippes of this Commonwealth or any other shippes or vessells to bee specially authorized and commissioned in that behalfe by warrant of his Highnes by the advice of his Councell, upon such terms and conditions as his Highnes, with the advice of his Councell, shall find just and give orders, and to be proceeded against, examined, and brought to judgment in his Highnes' court of Admiralty, and there to be adjudged sentenced and condemned according to the lawes of nations and usages and customs of that court by virtue of these universall reprizalls. And the judges of the Admiralty and his Highnes' advocate are hereby required to take notice hereof, and in all cases and seizures that may bee made, or brought into that court, upon these universall reprizalls, to proceed to examination and proofs, and all things requisite to judgment and sentence, accordingly, and likewise to make seizure and proceed to like judgment in the said court upon all claimes already made on behalf of any subjects of the said king and yet depending unjudged and not sentenced now registered¹ in the said court.

HENRY SCOBELL, Clerk of the Councell.

¹ ' Restored ' in original.

1655. Letter of reprisal against Spain.—
Adm. Ct. Letter of Marque Bonds 227,
f. 8.

Oliver Lord Protector of the Commonwealth of England, Scotland, and Ireland, and the dominions thereto belonging, to all to whom these presents shall come, Greeting. Whereas wee, taking into our consideration and apprehending that diverse well affected people of this Commonwealth have susteyned great wrongs, losses, and damadges, as well at sea in their shipps, goods, and merchandizes, being pilladged, spoyled, surprized, and taken by the shipps and subjects of the King of Spayne as by diverse and unlawfull seizures, wrongs, and violences used both against their persons and goods in ports and on shoare, contrary to the justice, and to the breach of the law of nations ; And although justice hath been prayed and sought according to the formes of states in amity, yet restitution or satisfaction could not be obteyned, for wee hould ourself tyed in honour and justice to afford the good people of this commonwealth such assistance for the recovery of their said losses and damadges as the lawes and customes of nations allowe ; And whereas Nathaniell Hawes and George Payne have susteyned loss and damadge, to the value of twelve thousand poundes, by the subjects of the said King of Spayne in surprizing and taking of the shippe called the Elizabeth in the yeare 1637, in her way to Virginia. And whereas all faire courses and due proceedings, according to the formes of princes and states being in amity, have been observed and used in demanding and seeking restitution and repar

ation for the said wrongs, losses, damadges, and yet restitution or satisfaction cannot be obteyned, Wee have taken the same into our consideration, and thought fit that letters of reprizall should be granted unto the said Nathaniell Hawes and George Payne, and have, withe the advice of our councell, granted and given warrant for the issuing out of such letters of reprizall unto the said Nathaniell Hawes and George Payne under the great seal of our high court of Admiralty to apprehend, seize, and take the shippes, vessells, merchandizes and goods of the said King of Spayne, or any of his subjects, untill they be fully satisfied for all the said wrongs, damadges, and injuries soe by them susteyned, together with the interest, costs, and damadges by them to be susteyned and expended for such apprehension, seizing, and taking, and prosecution of the same to adjudication. And whereas the said Nathaniel Hawes and George Payne have already equipped, victualled, and furnished a vessell called the Katherine, burden 200 tunns or thereabouts with 18 gunnes, whereof David Young goeth captaine, and have given bond in our court of Admiralty that neither the said vessell, captaine, or company shall prejudice or harme, or committ any spoyle upon any the good people of this commonwealth their friends or allyes, nor shall pilladge, spoyle, or breake the bulke of any shippes or goods as they shall take or apprehend as prize, before the same shall be adjudged in our said high court of Admiralty for lawfull prize, or shall be by that court decreed to be sould as perishable, and shall transmitt and send unto the Registry of the said court all such papers, bills of lading, charterparties, cocketts and other documents and writings as

they shall find aboard any such shipp or shippes as they shall soe surprize and take by vertue of these presents, and shall likewise bring or cause to be brought three or more of the chief officers of every such shipp or vessell as they shall soe take or apprehend, whereof the master and pilott to be two, to be examined in the said court, or by commission from thence, concerning such shippes and goods, and shall observe, fulfill and keepe all and every clause mentioned and specified in the 14th Article of the late treaty of peace agreed betweene England and France in a treaty at Westminster, the third of November 1655; And shall from time to time bring in and give such other sufficient security as the said court shall order and approve, and shall observe such other directions and instructions as wee and our councell, or any the generall or generalls at sea for this Commonwealth, shall further direct. Know yee therefore that wee, with the advice of our councell, and by authority hereof, doe licence and authorize the said Nathaniell Hawes and George Payne to sett forth to sea the said vessell called the Katherine, and therewith by force of armes to set upon, take, and apprehend any of the shippes, goods, wares, or merchandizes of the said King of Spayne, or any of his subjects whatsoever, or wheresoever the same shall be found upon the open seas, but not in any port or harbour, unless it be the shippe or goods of the party that did the wronge, and the said shipp, goods, wares, and merchandizes being soe taken and brought into some part of this commonwealth of England, and thereof an inventory taken and appraisement had and judgment given in our said high court of Admiralty for the approbation of the

same to be good and lawfull prize in manner and forme aforesaid, to keep and retaine in their possession and to make sale and dispose thereof in open market or otherwise to their best benefitt and advantage in as ample manner as at any time heretofore hath been used and accustomed by way of reprizall, and to have and enjoye the same as lawfull prize, and as their owne proper goods, according to the tenor and effect of the said judgment, and true intent and meaning thereof, without any trouble or molestation whatsoever; saving to such parties finding themselves aggrieved thereby their right of appeale. And that it shall and may be lawfull for any person of this commonwealth whatsoever or any other, either in his owne person to serve or otherwise to beare charge or adventure or in any sort further or set forward the said enterprize by vertue of these reprizalls; and also that it shall and may be lawfull for all persons whatsoever, as well of this commonwealth as any other, to contract bargaine for or buy the said shippe or shippes, goods, wares, or merchandizes soe apprehended, seized, taken, and adjudged for lawfull prize, or decreed to be sould as perishable, or for any other cause seeming fit to the judges of the said court, without any danger, losse, hindrance, trouble, or molestation whatsoever. Given in the said Court of Admiralty, under the great seale thereof, the 10th day of March 1655.

1655. Sentence condemning a non-commissioned captor in the value of an enemy ship captured and non-delivered up; and in the value of an anchor found in the sea and not presented.—*Adm. Ct. Libels* 112, No. 54.

After reciting the capture of a Dutch ship with a letter of marque against the English, by Pybus in the *Martha*, he having no commission; and that he had not delivered her to the prize commissioners; and that Pybus had found an anchor in the sea,¹ of which he had made no presentment, the sentence continues :

. . . Therefore wee, the said William Clerke and John Godolphin, doctors of lawes and judges aforesaid, having called upon God to inable us to give right and true judgment heerein, and having well weighed the meritts and circumstances of this cause doe pronounce, decree, and declare that the said John Pybus hath, contrary to his duty, furnished and assisted with victualls those that were in hostility against this Commonwealth, and hath indeavoured to deprive, and hath deprived, his Highnesse the Lord Protector of his just rights, profitts, and perquisites, and hath nott brought the said Holland shippe and her lading to tryall, nor given any satisfaction for the same, nor for the anchor and peice of cable aforesaid; which said shippe and lading, as appeareth by the depositions of some witnesses, was worth the summe

¹ The prize and also the anchor were Admiralty droits, and, if there had been a Lord Admiral, would have belonged to him. The association of the two matters in one sentence is unusual.

or value of £8000. And wee doe therefore hereby pronounce, decree, and sentence that the said John Pybus ought to bee adjudged and condemned to make satisfaction to his Highnesse the Lord Protector for the damage his Highnesse hath susteyned by the premises [in respect of] the aforesaid shippe and lading, and the anchor and peice of cable aforesaid ; but the quantum or howe much wee doe reserve to ourselves to expresse or liquidate in the execution of this our sentence ; And soe wee doe adjudge, sentence, and condemn the said John Pybus, and alsoe in the expences of this suite, the taxing whereof, and also the liquidation, which wee doe reserve to ourselves or other competent judge or judges, in this behalfe by this our sentence diffinitive or finall decree, which wee give and publish by these presents.

JO. GODOLPHIN.
WILLM. CLERKE.

1656. Sentence condemning as prize French goods in a Hamburg ship. — *Adm. Ct. Prize Sentences* 6, No. 198.

. . . And forasmuch as wee have seen and considered of the allegation given in this cause on behalf of the said Lord Protector, the tenor whereof followeth, viz.—The Lord Protector of the Commonwealth of England, Scotland, and Ireland, and the dominions thereto belonging, against a certaine shippe or vessell named the Fortune of Hamburg, whereof one Simon Hede-man was master, and her tackle and furniture, and whatsoever goods, wares, and merchandizes

aboard the same, belonging to the French king or his subjects, taken and lawfully seized by some shippe or shippes in the immediate service of this Commonwealth, in or about the moneth of February, 1653, and before the peace was concluded between England and France, as well by the right of nations as alsoe by vertue of reprizalls rightly and duely, and according to the law of nations granted against the French king or his subjects, for reparation and satisfaction to bee made of and for the dammages and losses sustained by the English nation by the violences, injuries, and wrongs done and committed against them by the said French king and his subjects, and against all &c, which said allegation remayneth on record in this court ; And for that, according to the processe and proofes had and made in this cause, itt appeareth unto us that all and singular the goods, wares, and merchandizes that were taken and seized in the said shippe, the Fortune of Hamburg, were laden and received att Rowen in France, and were bound therewith for Bourdeaux upon the account of Frenchmen ; And for that, as well by the lawe of nations as by due reprizalls lawfully granted, the said shippe and goods are to be proceeded against in this court, and to bee adjudged as rightly and lawfully confiscate ; Therefore wee, the said judges of the said court, having fully and maturely considered of the whole processe and nature and merits of this cause, and of all the proofes made herein, and having called upon God to inable us to give right and true judgement, Doe pronounce, decree, sentence, and adjudge, that Frenchmen, and subjects of the French king were true and lawfull owners and proprietors of the said goods and lading that were

taken and seized in the said shippe, the Fortune of Hamburgh, and that all the said goods and lading, being taken and seized by the shippes in the immediate service of this Commonwealth, in or about the moneth aforesaid, and before the articles of peace were concluded and agreed on between England and France, were duely and lawfully surprized and seized, and that the same ought to bee decreed and adjudged to bee good and lawfull prize and confiscate to his said Highnesse, Oliver Lord Protector of this Commonwealth of England, Scotland, and Ireland, and the dominions thereto belonging, wee doe decree, sentence, and finally adjudge all the said goods, wares, and merchandizes that were taken and seized in the said shippe, the Fortune of Hamburgh, soe as aforesaid, by this our finall decree, sentence diffinitive, which wee doe pronounce, give, and publish by these presents.

Walt. Walker.

JOHN GODOLPHIN.
C. G. COCK.

1657. Commission from the Duke of York
to capture rebels against the King.—
*Adm. Ct. Records.*¹

James Duke of York, Lord High Admiral of England and Ireland &c., To our trustie and well beloved Captaine Robert Jordan, and to all others to whom these presents shall come, Greeting. Know ye that we, reposing especiall trust and confidence in the courage, experience

¹ The Miscellaneous Bundles in which this is contained are in process of rearrangement.

in sea affaires, and good affection to our Sovereigne Lord the Kinge, of you the said Capt. Robert Jordan, Doe by these presents nominate, constitute, and appoint you to be Captaine of the good shippe, frigate, or vessell of warre, called the Saint Therese ; Giving you hereby full powre and authoritie to order and command in all things the officers and mariners and souldiers of the said shippe or frigate as belongeth to ye powre and office of a captaine. And we further hereby give you full powre and authoritie with your said shippe and fregate, compleatly manned and equipped and armed for warre, to enter into annie port or river of His Majestie's Dominions and either there, or at sea, to take, apprehend, and possesse, and in case of resistance to sinke, fire, or otherwise destroy all shippes and vessells, together with their men, lading, goods, or merchandize belonging to any place or person of His Majestie's subjects in actuall Rebellion against, or not in present obedience to him ; Together with the shippes goods and merchandize of their Aidors, Abettors and Assistants whatsoever ; And to bring all such shippes, goods, and merchandize as you shall take by vertue hereof, without breaking bulke, or altering the proprietie of the said goods, into some Port of His Majestie's Dominions in obedience to Him, or in to anie Port of His Allyes and Friends, and there cause the same to be adjudged lawtull Prize by the Judge of the Admiraltie established for the purpose ; And after such Adjudication to pay the tenths and fifteenths to such person or persons as shall have authoritie to receive the same ; But in case you shall be necessarily and unavoidably constrained to carry any Prize you shall take into any port where wee have no

Admiraltie Court, before Adjudication obtained, you shall then cause an exact Inventorie to be made of all the goods and merchandize, and shall send the same to the judge of the Admiraltie, together with the Envoyces, Charter Parties, Bills of lading, letters, and all other writings that may evidence that the shippes or goods may be lawfully made prize, and shall not dispose, sell, or alter the proprietie there of untill the same be legally adjudged lawfull prize; in which case you shall pay the tenths and fifteenths to such persons as shall be appointed to receive the same by deputation or otherwise, in the port where you are. Provided that by pretence hereof you neither doe, permitt, or suffer to be done anie violence or injuries to anie shippes, goods, or merchandize whatsoever belonging to the subjects of any Prince or Estate in league or amitie with His Majestie. All whom wee doe hereby entreate, (as wee shall doe a like occasion towards them), to be aiding and assisting to you in the execution of this our Commission, of which you shall enjoy the benefitt. And the same [to] be in full force for the space of two whole yeares from the date hereof, unlesse it shall be thought fitt for just reasons in the meantime to revoke the same, whereof you shall have timely notice given unto you. Given under our Seale at Armes at Bruges in Flanders this five and twentieth day of March 1657, And in the ninth yeare of His Majesties Raigne.

JAMES.

This his Royal Highness commission granted to Capt. Robert Jordan registered in the Court of Admiralty of our Sovereigne Lord Charles the Second, by the grace

of God king of Great Britain &c and caution is entred for the performance of the conditions limitations and provisoes therein conteained according to the tenor thereof and his R. H. Instructions observed in his Majesties present maritime service this 21st of April 1657.

This Commission was shewen unto the said Capt Jordan the 5th of June 1657 in presence of me.

JUSTINIAN PEARE MAIOR.

1657. Acknowledgment by the master of a (neutral) Hamburg ship of the payment by the captor of freight on Spanish (enemy) iron on board. — *Adm. Ct. Instance Papers* 7.

I, David Wouters, commander of the ship Hercules of Hambrough, doe hereby voluntarily declare that the iron taken out of the said ship, (being twenty one hundred Spanish quintalls or thereabouts), by the commander in chiefe of the English fleet before Cadiz, was shipt on board her at St Sebastian in June and July last by sundry merchants there, subjects of the king of Spaine, to be delivered at the port of St. Lucar, or Cadiz unto severall Spanish merchants, to whome only the said iron properly belonged. I alsoe by these presents acknowledge to have received of Captaine John Stoakes, the said commander in chiefe, the sum of two thousand pieces freight, in full satisfaction of freight for the said iron, being the allowance and after the manner which was to be

paide mee by the said Spanish merchants. In testimony whereof I have hereunto sett my hand this 15th day of August 1657.

DAVID WOUTERS.

Signed in presence of us,

ANTHONY YOUNG, EUSTACE SMITH,

W. THOMPSON.

A letter from the Council to Dr. Walker states that: The ship came from Bilboa, bound to Cadiz, laden with iron and hoops upon Spanish accompt, and consigned to Spanish merchants, as the master of the ship hath acknowledged under his hand and seal, and besides that the goods were contrabanda. Whereupon they were sold to the State's use, and the money paid into the Treasurer of the Navy by our order.

1657. Award by the Council to two French ships of a share in a Dutch prize which they had assisted in capturing.—*Adm. Ct. Instance Papers* 7.

Whereas the Fortune of Amsterdam, Daniell Egertson master, with her ladeing of wines, bound for Dunkerke or Ostend, if she could there get in, otherwise for Middleburgh, was lately taken and seized about a league and halfe from Dover by the Dartmouth frigot, in the immediate service of this Commonwealth, which said lading of wines is now depending in the Court of Admiraltie, and there ready for judgment. And whereas it appears that two ships of warre, belonging to Monsieur le Conte Charrat, governor

of Callis, which were set forth and equipped by him for his owne accompt, gave chase to the said Fortune from the French to the English shoare, and thereby occasioned the bringing her within the reach of the said Dartmouth frigot ; The Lord Protector and his Councell, taking into consideration that upon the reasons offered on the behalfe of the said governor of Callis, it appeared that had it not been for the assistance, and what was done by the chase made by the said two French ships, the said ladeing of wines had not been surprized ; And being willing therefore that some proportion should be allowed to the said governor and his French ships, as a rewarde in respect of the gaine that comes to this Comonwealth by those wines soe surprized ; And yet not being willing that the marine jurisdiction and territories of this comonwealth should be anywaies infringed, or any president¹ made to chase or surprize ships within this marine territorie without licence or allowance of his Highness and his Councell, doe therefore order that the Court of Admiraltie and his Highnesse advocate take speciall care that it be soe entred and provided for, and not otherwise alleageable, then as a speciall rewarde allowed by his Highness and the Councell in this speciall case. And there-upon and upon such caution and enteries to allow to the said governor and his said French ships in this speciall case one third part of the cleere proceede of the said ladeing of wines, in case the same shalbe adjudged for lawfull prize to his Highness, the Lord Protector.

W. JESSOP, [Clerk ?] of the Counsel.

¹ *Sic.*

1659. Order of the Council of State that suits touching captures made under foreign commissions be speedily heard.
--*Adm. Ct. Instance Papers* 7.

Forasmuch as complaint hath been made touching imbezlements of goods taken at sea by or under colour of forreigne commissions,¹ and brought into the ports of this commonwealth ; and that in this heate and season of the yeare, if provisionall order be not speedily given, many of them, being laden with corne, wine, and other perishable comodities, will suffer greate losse and damage ; The Councell being desirous that speedy right be done, without prejudice to the right of any of their forreigne allyes, Doe order, that all shippes lately surprised at sea by or under colour of comissions of warr from forreigne States, and now depending in any wise in the Court of Admiralty, with all the goods therein, be speedily ordered by the Court of Admiralty to be proceeded in, for delivery, upon sufficient bayle to be put in on behalfe of the first owners, according to the rules of justice. Provided that the Court doe such right therein that sufficient bayle be given to answere for the full values, and abide the judgment and justice of the Court there, and soe as the takers by such forreigne commissions may have liberty to proceed and have right done them, according to their cases and rules of justice.

HEN. SCOBELL, Clerke of the Councell.

¹ *Adm. Ct. Libels* 114, No. 20, is a commission from the King of Sweden to an Englishman.

1660.—Commission from Col. Doyley, Governor of Jamaica, to Captain Risby to command the Betty, frigate, against the Spaniards.—*Adm. Ct. Oyer et Terminer* 9, Nos. 175, 185.

'Edward Doyley, Esquire, Lieutenant Generall and Commander in chief of all His Majestie's forces imployed, both by land and sea in America, to Captain Risby.

By virtue of a power and authority to mee derived I doe hereby constitute and appoint you Captain of the frigate called the Betty, authorizing you in the said frigate, and the souldiers under your command to fight, kill, and take both by sea and land any of the King of Spaine's subjects, and take their ships and goods, and to appropriate the same to your own and the ship's companies use, being answerable to mee in this place for the tenth parte of such prize and prizes which shalbe by you soe taken, for the use of His Majestie. Given under my hand and seale at Point Cagway in the island of Jamaica this 27th of October 1660.

EDWARD DOYLEY.

1660. Proclamation recalling letters of marque.—*S.P. Dom. Proclamations*, Vol. 2, No. 9.

CHARLES R.

Whereas sundry Commissions have heretofore been issued out and granted, as well by the King's Majesty, as by his Royal Brother, the Duke of York, Lord High Admiral of England, to divers

of his Majestie's Subjects and others by sea, with authority and command, in hostile manner to proceed against and prosecute his enemies. His Majesty, by the blessing of Almighty God, being happily restored unto his throne, out of his tender care and respect to the welfare of his loving subjects, conceaving that the authority by the said Commissions granted may, possibly, be extended (contrary to his purpose) to the dammage and hurt of his true and faithful people, and to the great obstruction of the trade and commerce of his Kingdoms and Dominions; For prevention whereof he is graciously pleased to revoke, annul, and make void, and doth hereby revoke, annul, and make void, all and every the said Commissions, and all Powers and Authorities in them or any of them contained by his Majesty, or the Duke of York, before the first of May last granted to any of his subjects or others for maritime or sea-affaires in manner as aforesaid; Hereby willing and commanding them and every of them to forbear the further prosecution, using, or execution of the same Commissions, or anything therein expressed, upon pain of such punishment as by the Laws may therefore be inflicted upon them as Pirates; And his Majesty doth further will, require, and command all and every his Subjects who now are in the service of any foreign Prince or State by sea or in sea-affaires forthwith upon notice hereof to repaire to his Majestie's service at home in his dominions.

[*Dated 15th June 1660.*]¹

¹ A similar proclamation was issued on 20th June 1662, with a particular order against bringing Dutch prizes captured under Portuguese commissions into English harbours.

1662. Instructions to Capt. Christopher Mings to force a trade upon the Spanish West Indies.—*Adm. Ct. Vice Adm. Proceedings* 59, f. 10.¹

His Majesty out of his royall tendernes and care of his subjects hath directed mee by his instructions, which I have received, to use all wayes and meanes to settle free commerce and trade with the subjects of the king of Spaine in his dominions in America, and in obedience to his princely commands I have communicated the same by a speciall messenger to the Governors of Porto Rico and St. Domingo, whose answer expresseth their adherency to their former practices in denying us traffique, thereby ingrossing to themselves the riches of the Indies, contrary to use and custom of all governments and the lawes of nations ; All which hath bin freely debated by the Councell heere upon the 7, 14, and additional instructions given mee by his Majestie ; Whereupon it was resolved, in pursuance of the same, that endeavour should bee used to settle a trade by force or otherwise ; For which end and purpose, according to the order you have received, you shall make sayle with your frigate, the Griffith, and other private frigates of warr taken into your assistance according to the instructions following :

¹ This document is taken from a volume recording the proceedings of the Vice Admiralty Court of Jamaica. Lord Windsor succeeded Doyley as governor, and was himself succeeded by Sir Charles Lyttelton in 1663. The commission in the text is followed by a similar commission issued in 1664 by Lyttelton. Several Spanish ships were captured and condemned as good prize in Jamaica. The judge of the court and Mings were amongst the purchasers of them.

1. You shall receive into the frigate under your command, the Griffith, and other the private men of warr taken for your assistance, all such volunteers, inhabitants of this island of Jamaica, being well armed, whoe shall willingly victuall themselves for such tyme as the service and designe on which you are commanded may necessarily require.

2. You shall (winde and weather serveing) sett saile with the frigate under your command, the Griffith, and other private frigates of war to the neighbouring coast of the king of Spaine's dominions; and there you shall take, seize, and surprize, or otherwise by force destroy all or any of the king of Spaine or his subjects' ships and vessels or any others tradeing with him, or carrying men, women, or ammunition to him without lycence from his Royall Highness the Duke of Yorke, Lord High Admirall, or myselfe.

3. When you are upon the coast of the king of Spaine's dominions, and shall then finde a probable and fitt occasion of takeing any of his castles, forts, or townes, you shall call to your assistance and councell such persons in command with you in this designe as you shall finde able and discreete to advise with in soe weighty a matter; and if uppon mature deliberation it bee resolved by you that any the townes and forts may bee easily attempted without eminent hazard to the fleete, you have hereby power, by virtue of the aforesaid instructions given mee by his Majestie, to subdue, take, and destroy the same by force or otherwise, by which meanes possibly other places in the King of Spaine's dominions may be better inclyned to receive the settlement of a trade for his Majestie's subjects.

4. When you shall have taken any ships or vessells, you are in all things to observe such customes and rules lymited to the king's men of war in his Majestie's high court of Admiralty, that the said ships and vessells may be the safer brought into this port to receive sentence and judgement from the Court of Admiralty in Jamaica. And you are likewise to make it your care to give full directions to the private men of warr that they, and either of them, shall punctually observe their commands and instructions they have received uppon the takeing of any shipp or shipps by them or any of them.

5. For the better regulateing of the souldiers and marriners under your charge you shall call court marshalls, and to proceed in all things dureing this expedition according to the lawes of warr, lyfe and lymb excepted.

6. You shall make choyse of qualified persons of the late army as are now willing to adventure with you to bee commanders over the volunteer landmen, and your order shall bee sufficient for them, or either of them, to act or officiate in any of their respective places you shall see cause to intrust them in.

7. You shall in this affaire committed to your charge have a very circumspect and wary eye over the Spanish forces by sea or land, that you may the better prevent their assaults or ambuscadoes, and you are to have due regard least any treacherous person or persons bee in the fleete, that by this convenyency may have opportunity to betray you ; and you shall not with these shipps under your command continue longer forth in this expedition then the space of a calender moneth, unles winde and weather hinder, and the occasion of service, (being faire

and encouraging), absolutely require your stay fully to effect and dispatch the same, for the honour and reputation of the King, our Master, and the advantage of his subjects in this island.

Forasmuch as all men are mortall and you may dye, as well in the tyme of the voyage as the tyme of action, and that these forces bee not left without a due and orderly conduct, These are in case of your death to authorize and appoint Captain Thomas Morgan to command in chiefe the volunteer landmen, and if on shoare to command all the forces then landed, and Captain Adrian Vandeman Swart to command by sea, and from the frigatt Griffith under his command to issue out his orders to the Lieutenant and Master of his Majestie's ship Centurion and the commanders of other vessels ; and if it so happen that the said Captain Mings should dye before the tyme of action, then that the said Captain Swart returne, bringing back in the Centurion, Griffith, and some other vessells all the volunteere landmen, and to direct the private men of warr to persue their commissions and instructions which I have given them. But if the said Captain Mings in the tyme of action shall bee disabled by wounds or otherwise, then the said Captain Morgan shall prosecute the enterprize, yet with this caution and caire, that hee persue the same no farther then the necessity of the present ingagement compels and obligeth him soe to doe. But that in all things this dilligence be had both by the said Captain Swart and Captain Morgan that all their forces bee drawne off and retired to their ships with safety and good order for their returne to this his Majestie's island of Jamaica

and harbour of Poynt Cagway. Dated the 20th of September 1662.

WINDESOR.¹

1663. Sentence of the Vice Admiralty Court of Jamaica condemning a prize captured under the above.—*Adm. Ct. Vice Adm. Proceedings* 59, f. 27.²

James Duke of Yorke &c. . . . [*reciting the establishment of the court by the Governor of Jamaica, the King's order to force a trade by seizure of Spanish ships, the commission to the captor, and other matters of common form*] . . . Therefore the said William Michell esquire, judge of the said court, having fully and maturely considered the full process nature and meritts of the cause and of all the proofs therein made, Did and doth pronounce decree sentence and adjudge the said shipp, Nostra Senora la Solydad y Jesus Nazarino, her tackle and furniture, and all and singular the goods wares and merchandize taken and seized in her as aforesaid, to have binn the ship goods wares and merchandize of the subjects of the King of Spayne in America, and [that] they belonged to such Spanish subjects at the time of the seisure and surprizall, and that the same were lawfully surprized by force and vertue of the said commission, and according to the true intent and meaning thereof, and that the same ought to be decreed and adjudged to the said Captain George Brimacam and Company, and to the owners

¹ Thomas Baron Windsor, Governor of Jamaica; afterwards Earl of Plymouth. Poynt Cagway is Port Royal.

² The sentence is in English.

victuallers officers marriners and souldiers of the said frigatt Fortune, the fifteenths and tenths thereof and every part thereof, or the true value thereof being [first deducted],¹ and which is adjudged to be first taken out and payd to the use of his Majestie, our souveraine lord the King, and his royall Highnesse, the Duke of Yorke, Lord High Admirall. And the said judge doth further sentence and adjudge the said shipp tacke and furniture goods wares and marchandize seized therein as aforesaid, and the full and absolute property therein, to the said George Bremicam and Company, owners and victuallers, except the said tenths and fifteenths and duties to be payd as aforesaid, to be sold and disposed by them to and for the use of the said George Brimacam and Company, owners victuallers officers marriners and soldiers to be devided amongst them in manner and forme as is usuall in like cases, and the possession of the said shipp Nostra Senora de la Solydad y Jesus Nazarino, her tackle furniture goods wares and merchandize taken and seized in her as aforesaid is likewise ordered decreed and adjudged to the said George Bremicam and Company, (excepting and reserving as aforesaid), and they are hereby pronounced and adjudged true and rightful possessors and owners to all intents constructions and purposes by this decree and finall sentence, which is pronounced decreed and adjudged by these presents. Given this 30th day of January in the yeare of our Lord 1663.

¹ These words seem to have fallen out.

1663. Sentence confirming the plaintiff in his possession of a Dutch ship captured under letters of reprisal from the King of Sweden. — *Adm. Ct. Libels* 115, No. 46.

. . . Therefore we, John Exton,¹ . . . [*in common form*] . . . pronounce, decree, and declare that the aforesaid John Sandiford, in the years and months mentioned in the libel, under a commission or letters of reprisal granted to him by the most serene Prince, Charles Augustus, King of Sweden, against the subjects of the King of Denmark and the subjects of the States of the United Provinces, captured and overcame, upon the high seas, the ship [formerly] called the Water Dog or Water Hound, and now called the Providence, together with the goods on board her, and that, since their capture under the aforesaid authority of the King of Sweden, he has caused and procured the same to be adjudged to him as lawful prize. Wherefore we pronounce, decree, and declare that the said ship, the Water Dog or Water Hound, now called the Providence, and her apparel and furniture, being under arrest of this court, ought of right to be handed over and delivered to the aforesaid John Sandiford or his assigns, and to be kept in their possession . . . [*condemnation of the defendant in costs in common form*].

Walter Walker.

JH. EXTON.

. . . Idcirco nos, Johannes Exton . . . prefatum Johannem Sandiford, annis et mensibus in hac parte

¹ Was judge of the Admiralty during the Commonwealth and reappointed at the Restoration.

libellatis, prefatam navem the Waterdogg alias Waterhound, nunc vero vocatam the Providence, una cum operatione sua bonorum, vigore commissionis sive literarum reprizalium ei a serenissimo principe Carolo Gustavo, rege Swethlandiæ, contra subditos regis de Denmarke et Statuum Unitarum Provinciarum concessarum super alto mari cepisse et debellasse, et citra capturam et debellationem eorundem eadem autoritate dicti regis Swethlandiæ pro preda legitima sibi adjudicari procurasse et obtinuisse pronunciamus, decernimus, et declaramus. Quocirca prefatam navem the Waterdogg alias the Waterhound, nunc vero vocatam the Providence, ejusque apparatus et accessiones vigore warranti hujus curice arrestata, prefato Johanni Sandiford vel assignatis suis tradenda et deliberanda, ac in possessione eorundem tuend' fore de jure debere pronunciamus decernimus, et declaramus . . . [*condemnation of defendant in costs in common form*].

1664. Order for general reprisals against the Dutch.—*Lansdown MSS.* 194, f. 24.

His Majestie, having taken into consideration the injuries affronts and spoyles done by the East and West India Companies and others the subjects of the States of the United Provinces unto and upon the shipps goods and persons of his subjects, extending to their grievous damages and amounting to vast summes, and notwithstanding many and frequent demands made by his Majestie unto the States Generall of the said United Provinces for redresse and reparation, yet none could ever be obtained from them, Hath, with the advice of the Privy Councill, thought fitt and ordered that generall reprizall against the shipps goods and subjects

¹ Also in *Adm. Sec. In Letters* 5246, f. 78.

of the States of the United Provinces, soe that as well his Majestie's fleet and shippes, as also all other shippes and vessels that shalbe commissioned by letters of marque or generall reprizalls or otherwise by his Royall Highnesse the Duke of Yorke, Lord High Admirall of England, etc. shall and may lawfully seize and take all shippes, vessels, and goods belonging to the States of the United Provinces, or anie their subjects or inhabitants within anie the territories of the States of the United Provinces, and bring the same to judgment in the Admiralty Court; And that the said court of Admiralty be and is hereby authorised to proceed thereupon according to the course of Admiralty and lawes of nations, and to adjudge and condemn the same accordingly. And further that forasmuch as by the order and direction of his Majestie many of the shippes and goods belonging to the States of the United Provinces and their subjects and inhabitants have been and are already taken and seized, and remaine now under custody, His Majestie, with the advice of his Privy Councill, doth order and declare that all and every the said shippes and goods soe taken and seized which doe belong to the said States of the United Provinces or anie of their subjects or inhabitants thereof shall stand subject to the said generall reprizalls and be proceeded against by the said Court of Admiralty thereupon according to the course of Admiralty and laws of nations to finall judgment and condemnation. And this shalbe to the said court a sufficient warrant soe to do. Given at the Court at Whitehall the 16th of December, 1664.

RUPERT, SOUTHAMPTON, ORMOND [*and 18 others*].

Accompanying this (*Ibid.* f. 20) is a commission from the King to the Lord High Admiral of which the operative part is as follows :

. . . These are therefore to will and require you, and by vertue of these presents to authorize you as our High Admirall to grant your severall and respective commissions to anie such of our loving subjects and others as you shall deeme fittly qualified in that behalfe for the apprehending seizing and takeing of the shippes, vessells, and goods belonging to the said States of the United Provinces, and to bring the same to judgment before you, our High Admirall, or your lieutenant or lieutenants in your court, or courts, of Admiralty, for proceedings and adjudication and condemnation to be thereupon had according to the course of Admiralty and lawes of nations, with clauses in the same respective commissions to be inserted that the same being soe adjudged and condemned in such sort and manner as by the course of Admiralty and usages in such cases hath been accustomed, and with such other clauses likewise in the said commissions to be inserted as shalbe pursuant and agreeable to such Articles and orders as are or shalbe for that end resolved upon by ourselfe and issued under our signett or signe manuell, and delivered unto you, to remain with you upon record for your better direction in this case. Provided allways that before any such commissions issue forth, security be given upon every such commission as hath been used in such cases. [*The Instructions to privateers, eleven in number, follow; see below, p. 407.*]

1664. Proclamation as to prize, gun money, and pillage. (*Adm. Sec. In Letters* 5246, ad finem.)¹

His Majesty, with much satisfaction taking notice of the great resolution and cheerful forwardness of the seamen and mariners in the present service necessarily undertaken for the honour and defence of his dominions, and the commerce and trade of his subjects, and resolving to give due reward and encouragement to their valour and faithfulness, hath thought fit, (by the advice of his Council), to publish and declare :

That all captains, seamen, and others that do or shall serve in any of his Majestie's own or merchant ships imployed in his service shall, (for time to come, in lieu of all prizes), have and receive from his Majesty for every ship or prize they shall lawfully take, whether merchantmen or men of war, laden or light, the sum of ten shillings for every tun the said ship shall measure, according to the ordinary rule of Shipwrights' Hall, and six pounds, thirteen shillings, and four pence for every piece of ordnance, whether iron or brass, the same to be paid by the collector for prize goods within ten days after the payment of the wages of such seamen, (in case adjudication be made of the ship in the Admiralty court), to be shared and divided amongst them proportionably according to the respective places and offices in the ship in which they served, and according to the custom of the seas in that case.

And further that it be lawfull for all captains, seamen, and others serving as aforesaid to take

¹ Similar proclamations issued on 23rd May, 1689, and 1st June 1702.

and have to themselves as pillage without further or other accompt to be given for the same, all such goods and merchandise as shall be found by them or any of them in any ship they shall take in fight as prize upon or above the gun deck of the said ship, and not otherwise. And for every man of war sunk or destroyed by firing or otherwise, to have ten pounds a gun, onely to be divided as aforesaid, to be paid by the commissioners for prize goods within ten days after the payment of the ship as aforesaid, upon certificate of the matter of fact stated by the Council of war.

That care shall be taken for the defraying of the charges of sick and wounded as aforesaid, and for the relief of widows, children, and impotent parents of such as shall be slain in the service at sea, and for meddals or other rewards to such officers and seamen of the fleet as shall be found to have done any eminent or extraordinary service.

And that for supplying of necessary provisions for sick and wounded men on board, there shall be allowed by his Majesty five pounds for six moneths' service for every hundred men.

That upon the discharge of sick and wounded men from the ships in his Majestie's service, care shall be taken for the payment of their tickets and conduct money.

That directions shall be given to all mayors, bailiffs, and other magistrates in any port towns, to take care of all necessary accomodations, at the charge of his Majesty, for the relief and care of such wounded men as shall be sent on shoare.

That the moyety of all hospitals in England employed for the cure of wounded and sick people be reserved, during the time of war at sea, for

such as shall be wounded in the service of the navy, as they shall become void, from and after the 1st of November.

RICHARD BROWNE, Clerk of the Council.

1665. Ships of Embden and Ameland to be reputed as Dutch.—*Adm. Ct. Letter of Marque Bonds* 228, f. 40.

By the right honourable his Majestie's principall Commissioners for prizes.

It was this day ordered that Embden and Ameland are to be reputed as members and branches of Holland; And therefore wee pray and require you, the judge of the High Court of Admiralty, that when any shipp or goods belonging to either Embden or Ameland are brought unto their adjudication before you, that you pass sentence upon them as good and lawfull prize.

[Signed by five of the Privy Council, addressed to the judge, and dated 28th Feb. 166 $\frac{4}{5}$.]

1665. Rules for the Admiralty court in the adjudication of prizes.—*Lansd. MSS.* 194, f. 18b.¹

Rules and directions appointed by His Majestie

¹ There are other copies of these rules. See *Adm. Sec. In Letters* 5246, f. 96; *Adm. Ct. Letter of Marque Bonds* 228, f. 37; and *Ibid.* f. 83, similar rules for the war of 1672. They seem to be the 'body of rules and maritime ordinances' referred to in *Harley MSS.* 1509, f. 53, as having been ordered to be drawn up by Wyseman and others, including Dr. Jenkins; see Wynne's *Life of Jenkins*, i, xii.

in Council to be observed by the High Court of Admiralty in the adjudication of prizes :

1. That where the shipp or vessell brought in as prize shall belong to the State of the United Provinces or anie of their subjects or anie inhabiting with them, in such no claims shalbee admitted for the goods, but both shipp and goods shall receive one and the same judgment, and both bee adjudged and condemned as good and lawful prize, except sufficient letters of safe conduct from His Majestie or Royall Highnesse bee produced or prooved to be granted for the said shipp and goods.

2. That where the shipp shall belonge to anie of His Majestie's friends allies or subjects or anie of them, and shall have person or goods found aboard her belonging to anie of the States of the United Provinces, their subjects or inhabitants, in such case the said shipp and the said goods shalbee alike condemned as good or lawfull prize.

3. That where shipp and goods seized and brought in as prize shalbee claimed to belonge wholly to His Majestie's friends allies or subjects or anie of them, there, though claims shalbee allowed to be entered in the Court of Admiralty, yet noe claim shalbee allowed or suffered to proceed but where sufficient authoritie from the owners themselves is produced in court or made sufficiently to appeare; but the master shalbee allowed to have sufficient power to claime the shipp for his owners, and also whatsoever goods pretended to belonge to his owners, without anie special procuration from them, alsoe what goods are pretended to belonge to himselfe and marriners, alsoe for soe much of the lading as shall belonge to the freightors in partnership the claime may bee made by anie of them or anie

other havinge authoritie from them or anie of them; but where the ladinge shall belonge to severall merchants not in partnership, the claim shalbee made by each particular person for his respective part of the ladinge, or by some that hath authority for the respective persons, and not otherwise.

4. That where anie shipp mett withall by anie of the King's Royall Navy, or other shippes commissioned by his authoritie, shall fight or make resistance, or the master or anie of the company shall throwe away, burne, teare, or conceale anie of the shipp's papers or documents, or shall have noe papers at all found aboard in the said shipp, or shall bringe or offer to the Court anie false writings for evidence, thereby to cleare her or her goods, or anie of them, the said shipp and goods shalbee judged and condemned as good and lawfull prize.

5. That if anie shipp or vessell shalbee met withall carrying of arms, powder, ammunition, or provision of victualls, or anie contraband goods to anie port of the States of the United Provinces, or into anie of their territories, lands, plantations, or countries, such shipp or vessell, together with the said armes, powder, ammunition, provision of victualls and contraband goods shalbee seized and brought in, and shalbee judged and condemned as good and lawfull prize.

6. That where the court shall have a stronge presumption that the claime entered is fraudulent, the court shall proceed to condemnation, unlesse hee give sufficient security in case hee fails to proove his property, to pay such costs as the court shall adjudge against him.

7. That if a claim, either of the shipp or goods or both, shalbee judged against, and the claymant

shall make an appeale, such shipp or goods so claymed shalbee forthwith valued and sold, and the money proceeding of the same shall remain deposited till such appeale bee determined ; but in that case alsoe security shalbee given before the judges in the appeale by such appellant to pay such costs as the court shall adjudge against him, in case the appeale shalbee adjudged against.

8. That upon notice given to the Court of Admiralty of the seizing and bringing into any port of any prize, the court shall send forth a proces to be hanged up on the Exchange, or other most publique place, whereby all that pretend to have anie right to claime may come in and enter theire claimes in court in such cases where such claime is allowed ; and if noe person shall come in to claime within fourteene daies after the publication of the said proces then the court shall forthwith proceed towards adjudication ; and in case anie one shall come in to claime, if the goods shalbee perishable, the court shall forthwith order an appraisement and sale, and though they shall not appeare to bee perishable, yet if the claimer shall have a commission into forreigne parts for the proove of his property, then the court shall alsoe order an appraisement and sale as aforesaid.

9. That the Court of Admiralty shall sit twice a weeke, or oftener as occasion shall require, to give dispatch to the affaire of prize shippes and goods.

At the Court at Whitehall the 22nd of February 1664. The aforesaid rules and directions to be observed by the High Court of Admiralty in adjudication of prizes being this day read at the Board and approved, itt was ordered by His Majestie in Councill that the same be forth-

with sent unto the judge of His Majestie's said High Court of Admiralty to bee strictly observed and duely putt in execution.

RICHARD BROWNE.

1665. Some of the Council to the Admiralty judges; specifying certain articles which, in their view, are contraband, and urging their condemnation.—*Hargreave MSS.* 431, f. 65.

There having of late several applications been made unto us with complaint that you forbear the declaring any goods contraband, which are seised in ships trading with his Majesty's enemies the Dutch, to the very great prejudice of his Majesty's affairs, and the disappointment and discouragement of such who have taken particular commissions, and have armed themselves in his Majesty's quarrel with his said enemies; And whereás, in perusal of his Majesty's declaration we find you fully authorized and required to proceed to the condemnation of contraband goods, which have ever been reputed and are certainly in their own nature these following commodities, as namely, canvas, masts, pitch, tarr, and other naval accommodations, as also wine, oil, brandy, fish, corn, salt, flesh, and all other things that tend as provision unto the support of life, as well as powder, guns, or other instruments of war; without an observance of which his Majesty will in vain attempt the reducing of his enemies, if they shall enjoy

¹ Dr. Jenkins had recently been appointed to assist Dr. Exton, who died shortly afterwards.

the freedom of such unlimited supplies; We therefore hope that your forbearance hitherto in this point has proceeded rather from the multiplicity of your business, then from any oversight of the true sense and intendment of the said declaration, wherein we find with ourselves no manner of scruple in the reason of it, or the conformity therein with the laws of nations, besides the clear meaning of the general words of the said declaration; and do desire you to proceed in explaining the same, according to the true intention here recited, and as is most agreeable to his Majesty's service, and the encouragement of such persons as undertake the same.

We are your loving friends,

ALBEMARLE, ORMOND, ARLINGTON, ASHLEY,
BUCKINGHAM, LAUDERDAILL.

ROBT. SOUTHWELL.

Whitehall, May 17th 1665.

To the judges of the high court of Admiralty.

1665. Order in Council, that if any part of a ship belongs to the enemy, the whole shall be prize.—*P.C. Register* 58, f. 290 (24th Nov.).

His Majestie present in Councill did this day declare and order that, if upon tryall in the court of Admiralty, any part or share of a ship shalbe found and adjudged prize, as apperteyning to any of his Majestie's ennemies, the whole ship be deemed and disposed of as lawfull prize.

1665. Order in Council for restitution, to their English owners, of goods captured by Portuguese in a Spanish (enemy to Portugal) ship; the captor, who by treaty with England was entitled to them as prize, being recompensed by the King.—*P.C. Register* 58, f. 307.¹

Upon hearing this day the matter in difference between Don Joas Roiz de Siquera, commander of a Portugues man of warre, who alleadging by his councill learned in the law that he had seized a Spanish ship of Biscay in the Channell, and being under some obligation to bring the same with him unto Portsmouth, was there arrested by Sir Arther Ingram and other English subjects claiming the goods seized in the said ship, there being only one of the bills of lading on accompt of the Canary company, and six others in the names of Spaniards; the said Sir Arthur Ingram and other English alleadging also by their councill that the said ship was taken in one of his Majestie's chambers, and that they had seized

¹ Upon the hearing of this case in the Admiralty Court Jenkins had declared his opinion that the goods ought to be delivered to their English owners, 'if the league between England and Portugall did not hinder; the determination whereof he did submit to his superiors.' *Ibid.* f. 290, cf. Wynne's *Life of Jenkins*, ii, 733: 'I am taught that your Majesty's treaties with foreign nations are not to be any part of our speculation or debate in the Court of Admiralty; but to be interpreted by your Majesty's own royal judgment with the advice of your most honourable Privy Council'; and Penrice in 1745: 'As treaties between foreign states and Instructions to his Majesty's men of war and privateers are matters of state, they may vary according to circumstances.' *S.P. Dom. Naval* 28, f. 248.

their goods in one of his Majestie's ports, and that the goods in the six bills under Spanish names belonged to them, and that they used that colour but to preserve their interest from the Dutch, and therefore desired to have the benefit of the law of the land to seize and take their own where they found it. But the councill of the said captaine replied that the said ship was taken in the high and open sea, and that both ship and goods belonged to him by virtue of the articles of agreement made betweene his Majestie and the King of Portugall, where it is provided that if any goods of his Majestie's friends or subjects shalbe laded in the shipps of the King of Portugall's enimies, the same shalbee accompted as lawfull prize, and earnestly praying the benefitt of the said Article. His Majestie then present in Councill declared hereupon his great tendernes of his honour, and the desire he had to conforme punctually unto the letter of his treaty. And yet willing the same time to shew an extraordinary indulgence to his subjects, it was this day ordered that the English claymers doe forthwith hasten to make their title evident before Dr. Jenkins, judge of the high court of Admiralty, unto all such goods as they doe challenge, he summoning them. And he, the said Dr. Jenkins, is strictly to examine whether the said English doe not pretend to goods that are none of their owne. And when the truth and extent of their property shalbee sufficiently proved to him, then he, the said Dr. Jenkins, is to certifie the same unto this Board, or to the right honourable the Lord Arlington, as also how much of the said goods appeare to him to belong unto Spaniards. It is alsoe further ordered that all the goods and lading in the said prize pretended to belong to

English, according to their claim in the court, be unladen out of the said ship, and placed in such safe custody at Cowes or elsewhere as the right honourable the Lord Ashley shall direct, and there to be truly and impartially valued according to the full worth by indifferent persons chosen by the said English claymers and the agent of the said captain, or by such other person as Don Francisco de Melo, being here in behalfe of the King of Portugall, shall appoint to that intent ; which said value and estimate is to be returned unto the said Lord Arlington, that soe comparing the value of what the English claymers doe make appeare to be their owne, his Majestie may proportion and recommend a just reward thereout to be given by them unto the said captaine, and alsoe to this further end, that his Majestie may make good unto the King of Portugall the whole value of the said English goods, which his subjects, through his Majestie's great tendernes and bounty, doe save from confiscation. And that for all the rest of the goods that the said English claymers cannot make their property out unto, the same are upon the report of the said Dr. Jenkins to be delivered immediately into the custody of the said captaine or his agent, or whom the said Don Francisco de Melo shall appoint, to be by him or them immediately disposed off. And that in the mean time the said shipp and such goods as have not been claymed by the English be forthwith discharged and put into the hands of the said captaine, to doe therewith as he shall think fitt. Of all which, as well the governour of Portsmouth, as all other persons concerned in the execution of this order, are to take notice and give their obedience accordingly with all convenient speede.

1665. France remonstrates against England applying the rule robe d'ennemi to French goods. — *Harl. MSS.* 1509, f. 87*b*.¹

Your Majesty hath now published a declaration of war against the Hollanders, dated the second instant, which is very surprizing and of great consideration for the consequences of it, seeing it is penned in such terms, as that, without nameing the French to be enemies, they are yet made to run greater hazard in their goods and fortunes then the Hollanders themselves, inas-much as, carrying on their trade *bona fide* and with good meaning, it seems as if snares were laid to ruin them, under their captious and equivocal terms and exceptions, while the Dutch remain safe and hazard no more than what hath been already laden. Your Majestie will please suffer the said Embassador to make answer to what hath been told him, that the Lords Commissioners draw into consequence a certain Ordinance in France that robe d'ennemy confisque celle d'amy ; upon which he thinks fit to observe to your Majesty :

First, that it is a thing unheard of, that justice should be done in one kingdom according to the laws of another ; and, without doubt, less in that of England then in any other.

Secondly, if your Majesty would make another law, yet in reason it would not be put in execution but from the day of its publication ; it being a

¹ The document is long, and deals with other matters. As to a friend's ship not being prizable merely because she has enemy goods on board, although an unfree ship confiscates friends' goods on board, see Wynne's *Life of Jenkins* ii. 719.

thing that hath no example, but very pernicious ones, that a law should have anie retrospect.

Thirdly, that the French goods were laden on Dutch vessels very long before your Majesty had made any declaration of war against them. And though these reasons might be sufficient to dissuade your Majesty, and the Lords Commissioners, from giving judgment upon the foundation of that pretended ordinance, I shall yet add that the law is no longer practised in France, and that the King, my master, hath dispensed with it towards all such nations as he hath traded with ; and further that it was never put in execution against the English. And so the law of retaliation, drawn by head and shoulders never so much, cannot be applied to it ; for ever since the year 1650, and indeed ever since 1645, I take it, the King, my master, abolished that law as to the Dutch and the Hanze towns ; it being, as he thought, cruel, unjust, odious, and unjustifiable.

Lastly, that the law cannot come in question in this matter now in debate, nor be drawn to have an influence upon what is past, or to condemn a whole nation, (which otherwise in itself is not so very contemptible), to loose their reputation, estates, and vessels.

In fine, Sire, I exhort your Majesty, in the name of the King, my master, to lay by all thought of establishing any such law ; and so much the rather that even those, who sometimes received and practised it, have abolished and annulled it as unjust and absolutely contrary to all *societie*.

The following (*Harl.* 1509, f. 125) is an extract from a letter of the Prize Commissioners to the King commenting upon the above :

. . . Wee offer unto your Majestie that this is the ancient law of England, Spaine, and Portugall, and even word for word of France, never yett repealed but expressly avowed and authorized in the very Articles of their treatie with the Hanse Townes, anno 1655, and dispensed with to them onely for fifteen years. Some mittigation thereof wee finde in their late treaties with Spaine and Holland, but noe kinde of abrogation or annulling the said lawes, which are still in force, and have been rigorously executed not many yeares since against the English, as may be instanced in severall particulars of great value, when your Majestie shall command the sight of them ; And whereas they add upon this subject that some prohibitions have been already made by the most Christian king, and shalbee at your Majestie's desire further enforced for the future against the mingling Dutch goods and persons in French shippes, wee think wee may fairely observe to your Majestie that they hereby effectually condemn the practize thereof ; and conclude that your Majestie needs some extraordinary security against it ; which, wee humbly conceive, if you depart from these rules, cannot be established without the formality of a treaty ; neither can your Majestie ever hope to obtaine your ends by warre upon the Hollanders, if, while you at a vast expence kepe shippes at sea to intercept their trade, they in the meane time drive it securely under counterfeit shippes and papers, to elude the search and enquiry after them.

.
[Signed by Albemarle, Ormonde, St. Albans,
Anglesey, Lauderdaill, Arlington, Ashley.]

1665. Extract from a letter from the Prize Commissioners to the King; pointing out the abuses arising out of the recent grant to seamen of the right of pillage.
—*Harl. MSS.* 1509, f. 361.

... Your Majesty was pleased to grant whatsoever was found between decks unto the seamen; of which concession use had been made, not onely on shippes taken in heat of fight, but on shippes yielding without any opposition, and on very many brought in onely on suspition, and that very light, of which as well your Majesty as the court of Admiralty have discharged severall.

Further, upon pretence of this they have not onely taken all the goods on the orlopp, but broken bulk and taken away in all the shippes of best value, great and considerable proportions. And these things, wee are informed have been done in a high measure, and to a very great summe in the two East India and other shippes of great value now last brought in. And yet wee are informed that there is expected of your Majestie the tunnage and gun money for all the condemned shippes out of that small proportion left to your Majestie.

If wee may beg leave to represent the inconvenience of that concession, the advantage falls unequally amongst the seamen of the lesser shippes, and those that have the chance to light upon prizes, whilst others, of more meritt, under better discipline, and on more important imployment, have noe share of this advantage; and cannot come to any orderly decision. Besides it hath been the occasion for more slander no the nation and offence unto your Majestie's

neighbours than anything that hath happened in all the warre, that soe many shippes being seized, plundered between decks, (if noe worse), brought in, and afterwards, if there be noe colour of detention, freed by your Majestie's warrant, or the decree of the court; yet the goods taken away, not to be found, or the persons from whom they might have reparation.

And if none of this were, yett wee should beg leave to offer that the concession is very disproportionable itselfe, and such as was never enjoyed by any formerly. For in all the most considerable shippes the cabbins, between decks, and orlopp contain the most valuable sort of the lading; and we humbly conceive your Majestie were better to give them for the future, a sixth or a fifth part of the whole cleere profit; whereby the officers may be obliged to preserve the prizes from being plundered, the seamen kept in better discipline, and the shares of the commanders and seamen better preserved and more equally divided.

1666. Order in Council, that the Admiralty Court proceed against French, as against Dutch ships and goods.—*Adm. Sec. In Letters* 5246, f. 139.

His Majesty this day takeing into consideration the French king's declaration of warr against his subjects, in ayd and assistance of the States of the United Provinces of the Netherlands, Hath thought fit to order, and it is hereby ordered by his Majesty in Councill, that the high court of Admiralty do proceed against all shippes and goods that already are or shall hereafter be

taken or seised, belonging to the French King, or any his subjects, in the same manner as they doe against the shipps and goods belonging to the subjects of the United Provinces; And that they put all the rules, instructions, and directions given concerning the subjects of the said United Provinces in execution in all cases relating to the French King and his subjects.

1666. Memorandum by Williamson as to the King's and the Lord Admiral's tenths and fifteenths of prizes condemned in Jamaica.—*S.P. Dom. Charles II*, Vol. clv, No. 57.

. . . The Sorlings, which is to convoy severall merchants Eastward, is gone to Falmouth to fetch in a ship that came from Jamaica laden upon the King and Duke's account, having £50,000 worth of gold and plate for the tenths and fifteenths of prizes taken about those islands. On Satterday last coming home from Crookes haven, where she washt and tallowed, she was chased by two pickaroons, but was left, being mistaken for a fregatt.

1666. Sentence condemning to the King the Black Cat, a Dutch ship captured by the King's ships.—*Adm. Ct. Prize Sentences* 11, No. 6.¹

In the name of God, Amen. Having heard . . . [*in common form*] . . . Therefore we Sir

¹ From one of the Muniment Books in the Admiralty Registry, f. 273, it appears that a ship called the Cat, formerly the William and Thomas belonging to English owners, was

Leolyne Jenkins,¹ . . . [*common form*] . . . pronounce, decree, and declare that the aforesaid ship called the Black Cat, and her apparel and furniture, and all and singular the goods, things, wares and merchandise in her at the time of her capture were and are rightly and lawfully captured and seized, and belonged and appertained at the time of their capture to the Estates of the United Provinces and their subjects. Wherefore, by this our definitive sentence or this our final decree, which we pass and promulgate by these presents, we pronounce, decree, and declare that the aforesaid ship called the Black Cat, and her apparel and furniture, and all and singular the goods, things, wares, and merchandise captured and seized in her ought of right to be adjudged and condemned to the aforesaid lord the king as lawful prize.

Rt. Wyseman.

L. JENKINS.

Edm. Leighton.

In Dei nomini Amen. Auditis . . . [*in common form*] . . . Idcirco Nos Sir Leolyne Jenkins . . . [*common form*] . . . antedictam navem vocatam the Black Catt, ejusque apparatus et accessiones, omniaque et singula bona res merces et mercimonia in eadem navi tempore ejusdem capture existeantia, rite et legitime capta et seizita fuisse et esse, ac ad Status Unitarum Provinciarum eorumque subditos tempore dicte seizure spectasse et pertinuisse pronuntiamus decernimus et declaramus. Quocirca antedictam navem the Black Catt, ejusque apparatus et accessiones, omniaque et singula bona res

recaptured from the Dutch. She was claimed by her former owners, but having been in the possession of the Dutch from May to September she was condemned as prize to the King by sentence of 10th Nov. 1666. There was an appeal, which was unsuccessful.

¹ Succeeded Exton as judge of the Admiralty in 1665.

merces et mercimonia in eadem capta et seizita, prefato Domino Regi pro preda legitima adjudicanda et condemnanda fore de jure debere pronunciamus decernimus et declaramus per hanc nostram sententiam diffinitivam sive hoc nostrum finale decretam quam sive quod ferimus et promulgamus in hiis scriptis.

1667. Order in Council, that naval stores in prizes captured by H.M. ships are to be offered for purchase, at an appraised price, to the commissioners for the navy.
—*P.C. Register* 59, f. 283.

His Majestie being informed that diverse goods, as masts, hemp, tarr &c, which may be very usefull for his Majestie's navy, are many times taken and brought in by his Majestie's shippes of warr, and by them sold to private persons, so that the commissioners of his Majestie's navy are enforced to buy them again at excessive rates, to the great prejudice of his Majestie's affayres, as is sayd ; Which being taken into due consideration, it was thought fitt, and accordingly ordered by his Majestie in Counsell, that the lords commissioners of prizes, be and they are hereby desired to give order unto the sub-commissioners of prizes in their respective ports, that so soone as any navall provisions be brought in any prize shipp seized of his Majestie's shippes of warr within their severall districts, they give notice unto the said principall commissioners of the Navy of the qualities, condition, and quantity of such navall provisions, to the end, if the said commissioners shall find any of them usefull and necessary for his Majestie's navy, they may apply themselves to his Majestie's said principall com-

missioners for prizes for orders for the delivery of them at an appraisement to be made to the due value. But in case the said commissioners of the navy shall not, immediately after such notice received, apply themselves for such orders, and within 14 days after receipt of such orders for delivery as aforesaid, by themselves or their officers, take off the said goods so ordered to be delivered, and pay all charges falling upon them, the said principall commissioners of prizes, or their sub-commissioners, may proceed in the disposition of them.

1668. Proclamation ; neutrality. — *S.P. Dom. Various* 12, f. 256.¹

CHARLES R.

Whereas the safeguard and protection we owe to such of our own subjects, and to all others in league and amity with us as pass and repass the sea belonging to these our kingdoms, hath been always a principal part of our royal care and concern ; And whereas we find already that the freedom and security of navigation and commerce to and fro' our ports, (in this time of hostility between our neighbour princes), hath been much disturbed ; Nay the reverence due to our ports, harbours, and other places under our own immediate protection hath been violated by the piratical practices, depredations, and insolencies of private men of war and others pretending commission for the present hostilities ; We have thought fit, by the advice of our Privy Council,

¹ Written copies are in *S.P. Dom. Chas. II*, vol. ccxxxiv, No. 112 ; *P.C. Reg.* 65, f. 239. A similar proclamation issued in 1684, *P.C. Reg.* 70, f. 129.

after an exact view first taken of the rules, ordinances, and provisions made upon the like occasions by our royal progenitors, to revive, establish, ratifie, and publish to all the world these rules and ordinances following ; Our royal will and pleasure therefore is :—

1. That within our ports, havens, roads, and creeks, as also in every other place or tract of the sea that may be reasonably construed to be within any of these denominations, limits, or precincts, there shall be an inviolable truce and cessation of all hostilities between all persons and parties whatsoever ; and that no force, violence, surprise, or offence shall be done, either from man of war to man of war, or from man of war to merchant, or from merchant to merchant, that happen to be in hostility the one against the other ; but that all, of what nation or party whatsoever, so long as they shall be within our ports, harbours, or other places reputed to be within our more immediate protection, and where our commanders and officers are accomptable for the public peace shall be understood to be under our special safe conduct and must keep the peace inviolably each with other. And we do further declare, and hereby denounce, that the ships and goods of all aggressors, actors, and offenders whatsoever against the true meaning of this our Ordinance and Proclamation are and shall be ipso facto confiscate, and proceeded against in our high court of Admiralty to sentence and condemnation, according to law, notwithstanding any commission of war, or letters of reprisals such offenders may have, or pretend to have, for their justification.

2. We will and command that all our officers and subjects by sea and land do, as much as in

them lies, prohibit the roving and hovering of men of war so near the entry of any of our harbours, or our coasts, as that merchant-men homeward or outward bound to and fro' any of our ports shall apprehend their passage to be unsafe, or their danger of being set upon and surprised apparent, to the hindering and diverting of trade and commerce from our ports. And we do straitly charge and require our said officers and subjects to rescue, succour, and defend all merchant-men and others that shall happen to be set upon or surprised so near our coasts, or the entry of our harbours, as may be easily construed to be under our more special care and protection, and that they apprehend and seise all offenders in this kind, in order to bring them to condign punishment for disturbing and hindering the trade and commerce between our subjects and those of our neighbours and allies.

3. That where it happens that a man of war of the one party come into any of our ports where there shall be a merchant-man, (one or more), of the other party, such merchant-ship or ships, if they desire it, shall be suffered to depart the port two tydes before the man of war, to the intent they may get themselves out of his reach and pursuit. And if it happen that any man of war, (one or more), of the one party do come in while any man (or men) of war of the other party are in our ports or roads, none shall be suffered to go out to sea the same tyde with his enemy; but those that are most likely to pursue and engage, as soon as they are out of our ports, shall be stayed and detained two tydes after those of the adverse party are put to sea.

4. And we do hereby charge and require all Vice Admirals, customers, and other our officers

in ports and maritime places that they visit all ships and vessels belonging to our subjects that shall victual, furnish, or recruit themselves for voyages at sea ; And that they stay and detain all such as they shall suspect by the provision or furniture to be designed for any other then trading or fishing voyages, until further order from us, or our dearest brother James Duke of York, our high Admiral in that behalf.

5. And we do further straitly command and require all governours and officers in ports and other maritime places not to suffer any private man of war sailing by a foreign commission, and having any prize or prizes (that he may have taken) in his power and possession, to stay above twenty four hours in any of our ports or harbours, unless he be thereto constrained by contrary winds, blocking up by enemies, or other distress ; yet so that during his stay he do not break bulk, sell, barter, or leave behind him any of his prize goods, upon any terms or pretence whatsoever. And we further require our officers and subjects not to interpose or meddle in the affairs and proceedings of such men of war as put into our ports upon any distress, with foreign commissions, but to suffer them to carry away their prizes whither themselves think fit, provided they have not the goods or merchandises of any of our own subjects on board such prizes ; which if they happen to have, our meaning is, that they be upon due proof taken out and restored to the true proprietors.

6. We do straitly require and command that none of our subjects, of what degree or condition soever, do presume to buy, contract, or deal with any foreign men of war, their officers or company, or with any other person coming from the sea,

not being a known merchant, for any wares, merchandises, victuals, ammunition, tackle, furniture, provisions, or goods whatsoever, not brought in by course of merchandise, and the customs and duties upon them first paid, upon pain of forfeiting all such wares and goods as bona piratarum ought to be, and of being further proceeded against and punished in our high Court of Admiralty as abettors and complices of pirates, and as receivers of pirates and their goods ought to be by the laws and customs of the sea in that behalf.

7. And whereas divers of our subjects, out of their inclinations to rapine and licentious courses, rather than trading voyages, and other honest employments at home, do engage, some of the one side, and some of the other, in quarrels of our neighbour princes now in war, without our leave or permission ; We do hereby straitly command and require that no officer or mariner whatsoever, being our subject, do presume to put himself into the martial service of any foreign prince or state, or accept of and execute any commission of war or letter of marque or reprisal from any such prince or state, or go in any merchant or fishing voyage in any other ship or vessel then such as belong to our own subjects, without leave from ourself, or our dearest brother James Duke of York, our high Admiral of England, in due form first obtained. And we do hereby charge and command all officers, mariners, and seafaring-men to leave the same forthwith, and to get their appearance and return to their native country recorded in our high court of Admiralty, or before some of our officers thereunto impowered, upon pain of being reputed and punished as pirates. And in case any officer

or mariner neglecting to return upon these our summons happen at any time hereafter to come into any place or port of our dominions, we do hereby charge and require all Vice Admirals, and our officers in maritime ports and places to apprehend and seise such person or persons, and him and them so seised to commit to the next goal, there to remain until further order, and the certificate thereof to return with all speed into our high court of Admiralty, to the end that the offender or offenders may be proceeded against according to the laws of this our realm in that behalf provided.

[Dated 8th Feb. 1668.]

1670. Letters of marque and reprizall for the English whose ships were burnt in the river Elbe against the city of Ham-
burgh.—*Adm. Sec. In Letters* 5246,
f. 324.¹

Whereas upon complaint made to His Majesty in Councill severall English merchants, his subjects, interested in the ships, the Mary Bon-adventure, captain Edward Green commander, the King's Merchant, Roger Keate commander, the Cæsar Augusteene, Robert Scotten commander, the Red Lyon, Henry Petersen master, the Mary of London, Robert Hunter master, and the Olive Branch, Robert Bromwell master, and their severall goods and ladings, which were assayled, burnt, and taken by the Hollanders in the time of the late war in the river Elbe,

¹ Hamburg paid £35,000 for four of the English ships destroyed; *P.C. Register* 65, f. 97.

near New Mill, that the Senate of Hamburg, contrary to the law of neutrality and the laws of nations, did not only refuse and deny to assist, protect, or defend the said English ships within their jurisdiction, power, and view, and within the reach of the guns planted on the walls of the said city, albeit their aid was implored; but by their power exercised upon the said English debarred and prohibited them to go out of that city with such force as themselves could have procured, and also laid an arrest upon the English ships there under command of that city, which the English were setting out armed, to have pursued those Hollanders that did the damage, and to recover reparation for the same; his Majesty, in order to his clearer information and satisfaction of the truth of the whole matter aforesaid, was pleased to referre the examination thereof to two severall committees of this Board, who having mett sundry times, and heard aswell the complainants as the publique minister residing here on the behalfe of the said city, reported the state of the whole business to his Majesty. Whereupon his Majesty, having vouchsafed to hear the whole matter himself at this Board, where aswell the said Hamburg agent, with councill learned on his part, as also the complainants with their councill appearing, and the evidence of the fact, and arguments of right and law to the issue depending being effectually represented on both sides, and summed up, His Majesty was pleased, upon the whole debate, by an order of the 3rd of December 1669, to declare that he was fully convinced that, as an assault and outrage committed on his subjects was within the jurisdiction and limits of protection of the said city of Hamburg, so it appeared that the said

city had not only refused the reasonable assistance which was earnestly sought for and desired, but even liberty to the English to help and repayre themselves during the continuance of the said assault ; whereby the said city becomes obliged by all the lawes and right of nations to make reparation for the said ships and goods ; and did order that Mr Secretary Trevor should prepare a letter for his Majesty's signature to the said Senate of Hamburg, setting forth the violence and injustice of their proceedings towards his said subjects, and that he expected that effectuall reparation should be made unto them for the losses they have susteyned ; and in the same letter to require from the said Senate a speedy answer, whether they intended to give satisfaction or not, to the end his Majesty may accordingly take such further resolutions in this affair as in his royall wisdome should be thought fitt. Which letter was accordingly sent to the said Senate ; and although no satisfactory answer hath been returned thereunto, yet his Majesty was further graciously pleased, the 29th of June last, to allow unto the said Senate three weekes from the date hereof to give the petitioners satisfaction, otherwise he should take such course for their relief as should be agreeable to justice. Which time being elapsed, and the said merchants by their humble petition this day read at the Board, setting forth that they have not yet received any reparation or satisfaction for their losses aforesaid, it was thereupon thought fitt, and accordingly his Majesty, by and with the advice of his Privy Councill, did this day order that letters of marque and reprizall be forthwith granted unto the complainants for their reparation. And in order thereunto his royall Highness

the Duke of Yorke, Lord High Admirall of England, is hereby authorized and desired to give directions to the judge of the Admiralty to make prooffe of the quantum of their said severall losses, and of all matters and things necessary and requisite in order to the granting of the said letters of marque and reprizall according to the laws of nations and the practice of that court.

1672 (?). Instructions and orders set down by his Majesty under his sign manuell to be duly observed by Sir William Reeves, knight, commander of H.M. ship called the *Eagle*, sett out, (with other vessells under his command), for maintaining and securing of commerce for H.M. subjects in the Mediterranean and elsewhere, and for the suppressing of the piracies of the States Generall of the United Provinces and their subjects at sea.

These instructions are in substance similar to those of the period which were issued to privateers. It will be noticed that they are addressed only to the commander of a king's ship, and not to privateers. They are undated.

1672. Jenkins to (Williamson ?), remonstrating against the prize rules (of 1672 ?).—*S.P. Dom. Chas. II*, Vol. ccvii, No. 169.

[*After pointing out the danger of introducing a new rule of war, the writer proceeds:*]—Give leave therefore, I pray, Sir, to suppose the claimers

of the King's subjects and friends not admitted, but all plea precluded them in the Admiralty. In this case they cannot be denied the liberty of appealing, first to my Lords the commissioners, then, (if not relieved), to the King. They will insist that, by course of Admiralty, they were called to shew cause why their goods should not be judged prize; and being come they were refused a hearing. It will be urged that it is against the law of all courts, and the right of all nations not to hear the parties in judgment before sentence passe against them. A court may overrule a plea, but cannot refuse to hear it, if it come in time. So that what their Lordships shall be necessitated to determine upon this point, if it come before them, is so much the more to be considered in that, to refuse the benefitt of the law to a stranger is by all men taken to be a just and sufficient cause of reprizalls against the refuser.

I will, with your leave, Sir, further suppose these men's goods to be condemned upon the single point of fighting, without regard to the flag; (for where the flag is refused there is an expresse law that makes it equally fatall to all). In this case the claymers must be heard again upon their appeal, where they will be sure to say severall things that I confesse, I know not how to answer as:

That no hostility acted by the Dutch, (supposeing them the aggressors), shall involve a stranger not partie to it before a war be declared. For though the Dutch by their injuries and hostilities may have made it lawfull for us to treat them as enemies before any formall denunciation of warr, yet we cannot treat others, (that are not parties to the hostility, nor under their

obedience), as our enemies, upon their score, untill we give them warning of the danger by publication of the warr.

That our friends on board the Dutch Smyrna fleet could not be made prisoners of war, nor put to a ransome; there is the same reason their goods should be free, since they could not foresee this encounter, and were passive in it.

That the Dutch, (though enemies), are enabled by the declaration to make their retreat hither even after the warr begun, and have four or five moneths still to withdraw their estates from hence. It would be hard to put the good subjects, or the friend, in a worse condition then our enemies by a law made or a judgment given after the rencounter.

That if his Majestie were in peace, and found any of his own subjects in their circumstances fallen into the hands of any of his neighbors beginning a war against some other, he would no doubt extend his royall protection to them. And many more arguments would be made use of to reverse such a sentence.

In a word, Sir, could I find upon my own search, or the King's Councill shew me any law or precedent for this case of subjects and friends, I should, with as little difficulty as any man, proceed to that sentence. However I shall not onely with perfect submission, but with unfeigned satisfaction too, lay down my charge at his Majestie's feet, if his Majestie shall please to believe, or my Lords his commissioners to determine, that my so doing will be better for his Majestie's present service.

[Signed by Jenkins, and dated 8th May 1672.] ;

1672. Sentence condemning a Dutch ship and cargo as prize.—*Adm. Ct. Prize Sentences* 14, No. 3.

. . . Therefore we, Leoline Jenkins, . . . [*in common form*] . . . pronounce and decree that the States General or Senates of the United Provinces of Belgium, and their subjects and inhabitants, by reason of the war lately declared and published against them by our serene lord the King, are enemies and adversaries to and against him, and are reckoned and reputed as such; and that whatsoever ships and goods of theirs are seized and captured are deemed to be the ships and goods of enemies, and are to be reputed and confiscated as such. Therefore we pronounce, decree, and declare that the aforesaid ship called the White Fox, and her apparel and furniture, and also whatsoever goods and merchandise were captured and seized in her, belonging as they do to subjects of the aforesaid States, are to be declared, adjudged, and condemned to the treasury of the King, as goods belonging to enemies of our most serene lord the King, and we so declare and condemn them . . . [*in common form*].

Rob. Wyseman.
Walt. Walker.

L. JENKINS.

. . . Idcirco nos, Leolinus Jenkins, . . . [*in common form*] . . . Status Generales seu Ordines Unitarum Belgii Provinciarum, eorumque subditos et incolas, ratione belli publici ex parte serenissimi domini nostri Regis contra eosdem nuper indicti et denunciati, hostes et inimicos serenissimi domini nostri Regis esse, et pro

talibus consensos [*sic*] et reputandos esse; eorumque naves et bona quæcumque capta et seizita, naves et bona hostium seu inimicorum consenda [*sic*], proque talibus reputanda et confiscanda esse pronunciamus et decernimus. Ideoque navem prædictam vocatam the White Fox, ejusque apparatus et accessiones, necnon bona et mercimonia quæcunque in eadem capta et seizita, cum sint navis et bona quæ ad aliquos subditos Statuum prædictorum pertinuerint, pro bonis hostium, seu inimicorum senerenissimi domini nostri Regis, fisco Regis addicenda, adjudicanda, et condemnanda fore pronunciamus, decernimus, et declaramus, sicque addicimus. . . . [*condemnation in common form*].

1672. Sentence condemning to the King a Dutch privateer captured by a non-commissioned captor; the King, out of grace, granting her to the captor.—
Adm. Ct. Prize Sentences 14, No. 68.

. . . Therefore We, Leoline Jenkins . . . [*in common form*] . . . pronounce, decree, and declare that the aforesaid privateer, the Tarbrush, and her gear, and the guns and things in her at her capture, belonged to the States of the United Provinces, or to their subjects; And that they were enemies of our lord the king; And that the Tarbrush and the guns and goods in her were lawfully captured after war had been declared by the Portsmouth, whereof James Page was captain, then in the service of the King; And that the Tarbrush was a privateer; Wherefore we pronounce etc. that the Tarbrush, and the gear, guns, and goods in her, are to be condemned to the King and to his treasury; But upon proof that the king has, out of grace, granted her to Page and his company as a reward, we pronounce

that she is to be applied for their use and benefit.¹

Rob. Wyseman.

L. JENKINS.

Walt. Walker.

Joh. Godolphin.

. . . Idcirco nos, Leolinus Jenkins . . . [*in common form*] . . . antedictam navem privatam bellicam, the Tarbrush, ejusque apparatus et accessiones, et tormenta et bona et res in eadem tempore capturæ eorundem, ad dictos Status Unitarum Provinciarum, eorumve subditos aut incolas territoriorum eorundem spectasse et pertinuisse; eosque tempore capturæ predictæ eorundem fuisse et esse hostes serenissimi domini nostri Regis pronunciamus, decernimus, et declaramus; Dictamque navem the Tarbrush, et tormenta et bona et res in eadem tunc existentia post dictum bellum denunciatum per dictam navem the Portsmouth, cujus dominus Jacobus Page fuit capitaneus, in immediato servitio serenissimi domini nostri Regis tunc existentem, rite et legitime capta et seizita fuisse; Præfatamque navem the Tarbrush tempore capturæ ejusdem fuisse navem bellicam privatam pronunciamus, decernimus, et declaramus; Quocirca dictam navem privatam bellicam vocatam the Tarbrush ejusque apparatus et accessiones, et tormenta et bona et res in eadem ut præfertur capta et seizita præfato serenissimo domino nostro Regi et fisco Regio addicenda, adjudicanda, et condemnanda fore pronunciamus, decernimus, et declaramus, sicque addicimus, adjudicamus, et condemnamus; Sed eadem in usum et commodum dicti Jacobi Page, capitanei dictæ navis the Portsmouth, et marinariorum ejusdem navis disponenda, et in suum ipsorum usum et commodum per eos applicanda, modo legitime constiterit dictum serenissimum dominum nostrum Regem dictam navem bellicam vocatam the Tarbrush, ejusque apparatus et accessiones, et tormenta et bona et res in eadem dicto Jacobo Page, capitaneo dictæ navis the Portsmouth et marinariis ejusdem in

¹ The above is the short effect of the Latin sentence.

præmium gratuito concessisse et dedisse, (et non aliter),
pronunciamus, sicque decernimus . . . [*in common form*].

1673. Lauderdale to the Scottish judges as
to contraband and prize.—*S.P. Scot-*
land, Warrant Book 2, f. 229.

. . . I am commanded by his Majesty to let
you know that the treaty of Breda is certainly
void by the warre, and that no ally can claime
any benefit thereby when they carry provision
of victuall or other contraband goods to the
ports of enemies, or when they have goods
belonging to enemies on board. As to the other
part of the letter, it was deliberately thought
fit in the Councell of England that any number
of the Dutch nation being found on board should
not confiscate ship and goods, as it did during
the last war ; and thereby that article was kept
out of the rules which were given to the Court
of Admiralty here in England. But if any part
of the ship belong to any inhabiting within the
dominions of the States General, the whole,
both ship and goods, to be declared prize. And
if the master have his residence in Holland, you
are left to judge this case according to law, as
you shall think just. . . .

[*Dated 30th June 1673.*]

1673. Sir Robert Wyseman's opinion as to
whether a French prize to a Spanish
captor, being in an English port, may
be restored to her French owners.—
Adm. Ct. Prize Papers 7.

I have, according to your Lordshipps' com-
mand, examined the case of the two French

small vessells, the Saint Peter and the Clement, the first eighteen tunns burthen, the other twenty eight tunns. And I doe find that they both are laden with French wines, and are bound for St. Bruis in France, and both shipps and goods are belonging to Frenchmen, and that in their going to St. Bruis they were mett withall by a caper of Ostend called the St Adrian, whereof John Levarts Van Embden was commander, who though of Embden by birth, yet has his wife and family liveing at Ostend, as it is sworne. And he, having a commission of warre from the governor of Flaunders against the French onelie, and being manned onelie with Flemings, took the said two French vessells as lawfull prize, and put some of his owne men aboard them, directing them to carry them to Ostend. But after they had bin two dayes and two nights in the custody of the Flandrians, they were forced, the one by contrary windes, the other by one of his Majestie's doggers called the Hopefull Margett, to come into his Majestie's harbours, the one to Poole, the other to Portsmouth, where they are now detained by his Majestie's officers.

Upon this whole matter heere ariseth a question, which is onelie proper for his Majestie's resolution, who may consider what in this juncture of affaires is fittest for him to doe, viz^t. Whether the French, being not a bare friend and allye, as the Spaniard is, but also ingaged in the present warr with his Majestie, and remaining in his ports, ought not to be there as in a safe harbour, out of danger of their enemies, as if they were in any port of France?

I shall onelie offer to your Lordshipps that the lawe of nations does allow that his Majestie may, considering the French is socius in bello,

soe farre protect the French from their enemie in this case as to give them libertie to goe home, released of their enemies' capture; which, if the French were but in bare friendship and amitie with him, his Majestie could not doe. All which I humbly submitt to your Lordshipps' wisdomes.

ROB. WYSEMAN.

[Addressed to the Prize Commissioners, and dated 22 Dec. 1673.]

1673 (*circa*).¹ Extracts from the Duke of York's Instructions as to enforcing the salute; taking English seamen out of foreign ships; and searching privateers for English goods.—*Stowe MSS.* 180, f. 155.

Art. 22. Upon your meeting with any ship or ships within His Majestie's seas belonging to any foreign Prince or State, you are to expect that, in their passing by you, they strike their topsaile, and take in their flagge, in acknowledgment of his Majestie's sovereigntie in those seas. And if any shall refuse to do it, or offer to resist, you are to use your utmost endeavours to compel them thereunto, and in no wise to suffer any dishonour to be done to his Majesty. And in case any of his Majestie's subjects shall be so far forgetful of their dutie as to omit striking their topsails as they pass by you, when it may be done without the loss of the voiage, you are to bring them to the flagge, to answer his con-

¹ These are in print; there are, in all, 31 Articles. They are undated.

tempt, or otherwise to return the name of the shipp and of the master unto me, as also of the place from whence, and the port to which she shall be bound ; and you are to make the master of her to pay charge of what shot you shall make at her. And you are further to notice that, in his Majestie's seas, his Majestie's ships are in nowise to strike to any, and that in other parts no ship of his Majestie is to strike her flagge or topsaile to any foreigner, unless such foreigner shall have first struck, or at the same time strike her flagge or topsaile to his Majestie's ship, except in the harbour of some forreigne Prince, or in the road within shot of cannon of some forreign fort or castle, where the captains of his Majestie's ships are to conform to the custom of the place, and to salute the forts in such manner as is usual and customary for the ships of war of his Majestie or other Princes in that place. And for your better guidance in this Article you are to take notice that his Majestie's seas do extend to Cape Finisterre.

Art. 26. ~~Upon your meeting with any forreign ship or vessel, you are to send on board her some person, (for whose civil deportment you will be responsible), to see if there be any of his Majestie's subjects on board her, contrarie to his Majestie's proclamation forbidding any of his subjects to serve any forreign Prince or State; and such as shall be found you are to cause to be taken forth and disposed of in such sort that they may be forthcoming to answer their contempt of his Majestie's said proclamation. And you are to compel the master of the ship in which they shall be found to pay their wages for the time they have served.~~

Art. 27. You are also to search all private

men of war, which you shall meet with, whether they be his Majestie's subjects or forreigners; and in case you shall find on board them any English goods, arms, provisions for war, or victuals, to make strict enquiry from whence they had the same; and in case a good account be not given thereof, or that you shall have just cause to suspect the same was taken from some of his Majestie's subjects, you are then to bring the vessels into some of his Majestie's ports or harbours, there to be proceeded against according to their demerit.

Several ships were brought in for not saluting. In 1675 the master and two of the crew of an Ostender, the Young King of Spain, were prosecuted at Admiralty Sessions and fined £400, £50, and £50, respectively; these fines however were afterwards remitted. The story is told at length in *S.P. Dom. Charles II*, vol. 367, Nos. 167 to 177, with several copies of the indictment. The original indictment is in *Adm. Ct. Oyer et Terminer* 10. In 1676 a French ship was brought in, and her master fined £500; which was also remitted. ~~The indictments in these cases are in Latin and too long to print.~~ In the last case after setting out the right of the crown of England to the salute, and the failure of the accused to strike his flag and lower his topsail, after warning shots across his bows, the offence is thus described: vexillum prædictum in vertice mali navigii exteri Gallici prædicti expansum et volitans, et supremum velum ejusdem navigii ad summitatem mali elatum et affixum vi et armis, et illicite, insolenter, et more hostili . . . tenuit et continuavit, in contemptum domini nostri Regis nunc, et in consuetudinis supradictæ manifestam violentiam, et contra pacem dicti domini nostri Regis nunc, coronam, et dignitatem suas. A more serious case occurred in 1694; see below, p. 165.

1674. Sentence condemning a prize captured under letters of marque from the Lord High Admiral of Scotland.—*Adm. Ct. Prize Sentences* 14, No. 154.

. . . Therefore we, Leoline Jenkins . . . [*in common form*] . . . pronounce, decree, and declare that the aforesaid ship, the Mayflower, otherwise the May Tree, and her apparel and furniture, and the goods captured in her, belonged and appertained, at the time of their capture, to subjects of the States of the United Provinces, enemies of our lord the king, and that the same were by virtue of the letters of marque¹ granted as aforesaid against the said States General and their subjects for the capture of their ships and goods, rightly and lawfully captured by the said Charles Whittington, lately deceased, and by his said ship [the Portsmouth]; And we pronounce, decree, and declare that the said ship the Mayflower, otherwise the May Tree, and her apparel and furniture, and all and singular the things, goods, wares, and merchandise in her so captured as aforesaid, less the tenths or tenth part thereof, which we adjudge to the illustrious Prince James Duke of York, high Admiral of England, ought of right to be condemned and adjudged as lawful prize to the aforesaid honourable lord Arthur Earl of Essex, Sir Charles Bickerstaffe, knight, and Martin Forster esquire, executors of the will of the late lord Charles Duke of Richmond and Lennox . . . [*condemnation in common form.*]

Tho. Exton.

LEOLINUS JENKINS.

¹ Commissionis bellicæ ; granted by the Duke.

. . . Idcirco nos, Leolinus Jenkins, . . . antedictam navem the Mayflower alias the May Tree, ejusque apparatus et accessiones, ac bona in eâdem capta, ad subditos Statuum Unitarum Provinciarum, hostes domini nostri Regis, tempore capturæ eorundem, spectasse et pertinuisse, ac vigore commissionis bellicæ contra dictos Status Generales, et eorum subditos, pro captura navium et bonorum suorum, ut præfertur concessæ, per dictum Carolum Whittigton, modo demortuum, et navem prædictun rite et legitime capta fuisse, pronunciamus, decernimus, et declaramus ; Dictamque navem the Mayflower, alias the May Tree, ejusque apparatus et accessiones, omniaque et singula res, merces, et mercimonia in eadem ut præfertur capta, (deductis prius decimis seu decima parte eorundem, quas quidem illustrissimo Principi Jacobo Duci Eboracensis, tempore capturæ prædictæ, domino magno Admirallo Angliæ, adjudicamus), pro prædâ legitimâ præfatis honorando domino Arthuro domino Comiti Essexiæ, domino Carolo Bickerstaffe militi, et Martino Forster armigero, executoribus in testamento dicti celcissimi Principis domini Caroli nuper Ducis Richmondiæ et Levinæ defuncti nominatis condemnanda et adjudicanda fore de jure pronunciamus, decernimus, et declaramus . . . [*condemnation in common form*].

1675. Sentence condemning a prize captured after peace declared, but before the time named in the treaty for cessation of hostilities at the place of capture.—
Adm. Ct. Prize Sentences 14, No. 162.¹

. . . Therefore we, Leoline Jenkins . . . [*in common form*] . . . pronounce, decree, and declare that the goods, things, wares, and merchandise

¹ The captor had no commission, and there being no Lord High Admiral, the prize went to the King.

mentioned in the schedule annexed to these presents, captured in the said ship, the Bachelor, at the time of their capture, which happened on or about the 24th of March 1673, (English style), so far as we can ascertain, belonged and appertained to the said States of the United Provinces ; And that they were rightly and lawfully captured and seized in the sea called the Bay of Cadiz, outside the range of the castles and forts of the Catholic King of Spain ; And that the Bay of Cadiz, where the capture was made, is between the part of the sea called the Soundings and the town of Tangier ; And that, according to the treaty of peace made and concluded on the 19th of February 1674 between our most serene lord the King and the aforesaid States, at the time when the capture was made, hostilities had not ceased in those seas, and that it was still lawful and permissible for either belligerent to carry on hostilities in them ; Therefore we pronounce, decree, and declare that all and singular the said goods, things, wares, and merchandise ought of right to be awarded, adjudged, and condemned to our most serene lord the King and his royal treasury, as droits and perquisites belonging to the office of the Admiralty of England, and to be reckoned as such, and we so award, adjudge, and condemn the same . . . [*in common form and in costs*].

. . . Idcirco Nos, Leolinus Jenkins . . . [*in common form*] . . . bona, res, merces, et mercimonia in dictâ schedulâ presentibus annexâ mentionata, in dictâ nave the Batchelour capta, ad dictos, Status Unitarum Provinciarum, eorumve subditos aut incolas territoriorum eorundem, tempore capturæ dictorum bonorum, (quæ captura fuit in aut circa vicesimum quartum diem mensis Martii, anno Domini millesimo sexcentesimo septua

gesimo tertio, stilo Angliæ, (quatenus nobis constare potest), spectasse et pertinuisse; Eademque bona, res, merces, et mercimonia in dictâ nave the Batchelour tunc existentia in eâ parte maris vocatâ the Bay of Cadiz, extra jurisdictionem castellorum et propugnaculorum Regis Catholici Hispaniarum rite et legitime capta et seizita fuisse; Eandemque partem maris vocatam the Bay de Cadiz, in quâ dicta captura sive seizura facta fuit, inter illam partem maris vocatam le Soundings et civitatem Tangier sitam esse, et ab hostilitate infra spatium illud nondum cessatum fuisse virtute tractatus pacis inter dictum serenissimum dominum nostrum Regem et Status antedictos $\frac{1}{8}$ Februarii anno 1674 initi et conclusi quin immo hostilitatem tempore dictæ capturæ sive seizuræ utrique parti in bello versanti adhuc licitam et permissam fuisse pronunciamus, decernimus, et declaramus. Quocirca omnia et singula bona, res, merces, et mercimonia in dictâ schedulâ presentibus, (ut prefertur), annexa mentionata in dictâ nave the Batchelour, (ut prefertur), capta et seizita tanquam jura et perquisita ad officium Admirallitatis Angliæ spectantia, et inter eadem computanda, præfato serenissimo domino nostro Regi et fisco regio addicenda, adjudicanda, et condemnanda fore pronunciamus, decernimus, et declaramus, sicque addicimus, adjudicamus, et condemnamus . . . [*condemnation of the claimant in costs*].

1676. Proclamation against serving foreign princes.—*S.P. Dom. Various* 12, f. 349.

Whereas complaints have been made to his Majesty by the ministers of several princes and states now in amity with his Majesty, that divers of his subjects have lately taken commissions from some princes and states now in amity with his Majesty, to serve at sea against others, who are likewise his allies; His Majesty for the

preservation and continuance of friendship and amity between him and his respective allies, doth by this his royal proclamation, (with the advice of his Privy Council), strictly prohibit and forbid all his subjects whatsoever to take any commission at sea, from any foreign prince or state, against any other foreign prince or state now in amity with his Majesty, their vassalls or subjects; or by vertue or colour of any such commission already taken or hereafter to be taken to set out or imploy any ship or vessel of war, or serve as mariners or seamen in any ship or vessel which shall be employed against any prince or state now in amity with his Majesty, their vassalls or subjects, during this present war. And all his Majestie's subjects are required to take notice of this our royal command, and to conform themselves to the same, as they tender his Majestie's high displeasure, and upon pain of being punished with the utmost severity of law and justice.

[Dated 17th May 1676.]¹

1676. Danish ship captured under a Swedish commission to be restored by the Scottish Admiralty Court.—*P.C. Register* 65, f. 355.

Whereas it is represented by Sir James Stansfield in his letter from Edenburg of the 27th of September last that one Captain Pidgeon, appointed commander of a vessel called the

¹ Similar proclamations issued in 1662, 1674, 1678, and 1688; sometimes with a direction to captains of H.M. ships to arrest and bring in seamen found serving foreign princes. Cf. Vol. i, 202, an Elizabethan proclamation of 1575.

Charles yacht by Major Balfour, who obtained a pretended Swedish commission, did seize upon and take a Danish shipp laden with corne, and carried her into Leith, contrary to his Majestie's late proclamation forbidding his subjects to take any commission at sea from any foreign prince or state &c. Their Lordshipps think fitt to order that the right honourable Mr. Secretary Williamson do send a copy of such part of the said letter as concerns this matter to his Grace the Duke of Lauderdale, and that it is the judgment of their Lordshipps that the prize should be restored, and that the privateer with all his Majestie's English subjects on board at the capture should be sent hither to be proceeded against according to law.

1676. Extract from a pleading, shewing that prizes were taken to, and condemned at, foreign ports.—*Adm. Ct. Libels* 117, No. 82.

. . . That the said States Generall of the United Provinces did, after the beginning of the late warre betweene the crown of England and them, the said States, grant their commission to Don Nicholas Van Hoorn, as their chief commissioner, to reside in the city of Corunna in the dominions of the King of Spaine, and did therein grant to the said Don Nicholas Van Hoorn, (*inter alia*), full power and authority to judge and condemn all shipps belonging to any foreign persons in enmity with the said States; and did alsoe in their said commission grant power and authority to the said Don Nicholas Van Hoorn to depute and constitute any person he

should think fit in his place and stead to be his lieutenant or deputy commissioner, if he, the said Don Nicholas Van Hoorn, did the same.¹

1676. Certificate as to the customary mode of sharing prizes captured by H.M. ships.—*Adm. Ct. Libels* 117, No. 200.

These may certify, all whome it maye or doth concerne that the method att sea in His Majestie's ships of war when any prize is taken that the captain hath one third part and the officers one third part and the ships company one third of all goods whatever there is to be divided out of prizes. As wittness my hand this 22nd Julii 1676.

JOHN WETWANG.²

1676. Orders in Council as to pillage ; negroes above the gun deck ; gold dust.
P.C. Register 65, f. 99.³

There being this day presented to his Majestie in Councill a report from the Lords commissioners of Appeales in cases of reprizalls in the words

¹ The question in dispute in the suit was as to the ownership of an English ship which had been captured by the Dutch, condemned at Corunna by Van Hoorn as prize, and afterwards bought from the captor. The passage in the text is taken from the defendant's pleading. No. 116 in the same File is a similar case ; the prize there was condemned at Naples. Cf. p. 213 below.

² A commander of H.M. principal ships.

³ See further as to this case Wynne's *Life of Jenkins*, ii, 706, 734. In 1690 pillage was allowed to Capt. Graydon of H.M.S. *Defiance* ; *P.C. Reg.* 73, f. 522.

following : May it please your Majestie, there hath been brought before us, as your Majestie's commissioners of Appeale in cases of reprizall, a certain cause touching 544 negros taken in a Dutch ship, and claymed by the captors as having been found above the gun deck, according to the 7th Article of the Act for establishing Articles and Orders for the regulating and better government of his Majestie's navyes, ships of warr, and forces by sea. And the whole fact is as followeth :

Your Majestie's hired ship the Thomas and Francis, Captain George Gallop commander, being at Jamaica, a proposall was made to joyne to her assistance a certain privateer called the Flying Horse, under command of Captain Otway, and according to Articles of agreement they both sayled towards Curasaw, and there intercepted a Dutch vessell called the Susanna, one Lynch commander, coming from Guinny, and having on board 544 negroes, found all of them above the gun deck. The prize being brought to Jamaica, the court of Admiralty there proceeded to sentence and award to the undertakers that sett forth the said privateer all their share according to the agreement, as also a share to the Lord High Admirall, and to the officers of the said court, and severall other charges relateing to this business, so that the number of 300 slaves were absolutely disposed of in that place.

And although there were a distribution of some negroes to Captain Gallop, and some money advanced unto most of the officers and seamen, yet no sentence did there formally pass as to the residue of the negroes, being 244, in favor of the said captain, officers, and seamen ; but they were sold by the then Governor, Sir Thomas

Lynch, to severall persons in that island, and the determination as touching their right was reserved to your Majestie.

And your Majestie having, when the said captain and seamen came home and made their applications, referred the decision thereof to the court of Admiralty here, the judge gave sentence in favor of the captors, according to the said Act of Parliament, decreeing all the negroes unto them. From which sentence your Majestie's Advocate having brought an appeale before us, wee did consult your Majestie's learned councell touching the validity of the said Act of Parliament. And they gave us their opinions, that although there might be no such thing in the intention of the law makers, yet the words of the Act were very strong and binding in favor of the captors. Whereupon wee conceived that wee had nothing before us but to take care that what had been judicially done in Jamaica might not be overthrowne by the proceedings here. And therefore, finding that the judgment there had not been pleaded in barr of the proceedings of your Majestie's court of Admiralty here, and that the sentence which was here given seemed to be generall, and to extend to a disposition of all the negroes taken in the said ship, wee therefore did reverse so much of it as related to the said 300 negroes, which had been disposed of before, and thought it both just and for your Majestie's service to leave all the proceedings of that island in their full force and validity ; and the rather because no regular appeale had been brought or entred against those proceedings. But wee have confirmed the other part of the sentence given here, as to the disposition of the 244 negroes, which according to the custom

of the sea, are, by our judgment, to be divided between the said Captain Gallop, his officers and seamen, who were either then actually in his own ship, or by way of conveniency spared at that time into the privateer, but still in your Majestie's pay. Yet for such part or portion of the said booty as was given and hath been already received as aforesaid, either by the said captain, as commander of your Majestie's ship, or by the said seamen, a deduction is to be made, accordinge to a true and proportionable account to be made thereof.

Wee presume further to informe your Majestie that, upon the advice of Lord Vaughan, as your governor in Jamaica, wee find that he did demand from Sir Thomas Lynch, his predecessor, the account of the said 244 negroes, and all the effects received for such of them as were payd for, and also the bonds and contracts for those which were not. And his Lordship did send a duplicate of the said account unto your Lord High Treasurer, and charged himself therewith, (a copy of which account is hereunto annexed). And forasmuch as wee have had very many hearings, and no little trouble in the setling and adjusting of this affayre, and are now willing that it may turne the most advantageously that can be to the captain and mariners' account, wee humbly offer to your Majestie that by your speciall command the Lords commissioners of prizes may write unto the Lord Vaughan, your Majestie's governor in Jamaica, to call in and recover with all possible speed the debts which yet stand out on this account, and that as fast as they come to hand he remitt them hither unto George Mountney esquire, receiver generall of prizes; and that what he hath in ready money, according

to the said account, be presently returned by bills to the said Mr. Mountney; that so the said Lords may see the whole distribution made among the captain, officers, and seamen according to right. All which is most humbly submitted.

DANBY, CRAVEN, H. COVENTRY.

Treasury Chamber
10th January 1675.

His Majesty was pleased to approve of what their Lordships had proposed herein. And accordingly the Lords commissioners of prizes are herein authorised and required to write forthwith unto the Lord Vaughan, governor of Jamaica, to call in and recover with all possible speed the debts which yet stand out on account of these 244 negroes, and that as fast as they come to hand he remitt them unto Richard Mountney esquire, receiver generall of prizes, and that what his Lordship hath in ready money, according to the said account, be remitted unto the said Mr. Mountney by bills. And their Lordships are to take care that the product of the said negroes, (which by the said account comes to £4801), be drawne home the most advantageously that may be for the use of the captain, officers, and seamen, and afterwards the distribution thereof made among them according to right.

The following (*P.C. Register* 68, f. 389¹) relates to this case:

Upon reading this day at the Board a report from the right honorable Sir Leoline Jenkins,

¹ *Add. MSS.* 18206, f. 141, is a copy.



knight, judge of his Majesty's high court of Admiralty in the words following, viz.

May it please your Majesty,

Having in obedience to your Majesty's gracious Order of Councill viewed the proceedings had in the court of Admiralty touching Capt. Gallop and the gold alledged to have been taken by him in a Holland ship, which he seized as prize in the last warr with the Dutch, I do find that I gave a finall sentence in this cause, all parties being present in judgment, upon the 11th of March 1674, English stile, to this effect: That the ship, her tackle and furniture, and all the goods, wares, and merchandizes seized in the same, excepting the negros, should stand condemned as lawfull prize to your Majesty; That all the negros in the ship being upon the gun deck should by vertue of an Act of Parliament for the encouragement of seamen be shared and divided between Capt. Gallop and his company. From this sentence I find there hath been a double appeale; the one by your Majesty's proctor, for that I had adjudged all the negros on board to Capt. Gallop and the takers, and not to your Majesty; the other appeal was by Capt. Gallop and the takers themselves for that I had adjudged the ship and all that was in her, (the negros excepted), as lawfull prize to your Majesty, without adjudging any share to them in the ship and the remainder of the lading. This cause being thus appealed, was brought before the Lords Commissioners of Appeale in December 1675; and their Lordships, having heard that part of it that concerned the negroes, were pleased to affirme the adjudication of them to the takers. The other part, which concernes the remainder of the goods in the ship, and consequently the

gold in question, is not yet heard by the Lords Commissioners of Appeales; but the hearing and determining of it belongs solely to their Lordships, the cause being removed from me by appeale, and now depending in a superior court, so that it is in that court, and not in the Admiralty, that the complainants are to seeke for redresse. All which I humbly submit to your Majesty's royall wisdom.

L. JENKINS.

It was ordered by his Majesty in Councill that the right honorable the Lords commissioners of Appeales for prizes be desired forthwith to meet and finish all matters depending before them by way of appeale, and particularly this business in difference between Captain Gallop and the mariners lately belonging to the ship Thomas and Francis touching gold dust by them taken in the ship Susanna of Amsterdam.¹

1678. Order in Council requiring the Dutch fleet to move from Portsmouth to Plymouth, for fear of collision with the French fleet, which was there before them.—*Add. MSS.* 30, 221, f. 67.

Advice coming this day to Sec^y Coventry from Portsmouth of several Dutch men of war putting in there in their return from the Straights for shelter during the present season, the frost not suffering them to go into their own ports, the consideration of the safety of His Majesty's

¹ The gold dust having been condemned to the King was by him given to the captors. *P.C. Register* 68, f. 466.

ships against any mischief that may be done thereto by surprise was taken into debate at a meeting of the Lords purposely called, and Col. Legg Governor of Portsmouth attending; where it was at last determined that ground being taken from several of the King of France, his ships being there before them, and the differences that may possibly arise between their men in case they should continue there together, the Dutch Ambassador should be let to understand that it would in every respect be more convenient that the States' ships should repair to Plymouth, where they might lie in every respect as safe and commodiously as at Portsmouth, and be supplied as easily with all they stand in need of. That for such ships as stood in need of anything to enable them to repair to Plymouth, they should be furnished therewith at Portsmouth, in the same manner and with the same respect as the French fleet formerly was, upon a security taken of the particulars of the said wants and overlooked by some of His Majesty's officers, the care whereof was committed in the present occasion to Col. Legg, and that Col. Legg do repair to Monsieur Van Buninghen, the Dutch ambassador, to acquaint him with His Majesty's determination herein.

1678. Certificate as to the rate of salvage usually paid on a recapture.—*S.P. Dom. Naval* 4, f. 61.

These are to certify to all to whome it may concern, that in cases of rescue of a ship or goods from an enemy, where such ship or goods have been proved to belong to the subjects of our

sovereign lord the king, such ship and goods have been generally restored to the first proprietor by judgment of the high Court of Admiralty, they paying one eight part of such ship and goods for salvage thereof. And more than one eight part hath seldom been paid, unlesse in cases extraordinary ; and in such cases satisfaction hath been made according to the danger and hazard undergone ; but the most usuall and generall salvage hath been one eight part. Given under our hands, at Doctors Commons, London, the 8th June 1678.

SAMUELL FRANCKLIN, THOMAS BEDFORD,
deputy registrar of the High Court of Admiralty,
RA. SUCKLEY, RICH. LLOYD, THO. PINFOLD.

1680. Report as to restoring a Bristol ship taken by an Algerine, and afterwards driven on the coast of Ireland, and there seized, with some Turks and renegados, after the same had been seven or eight days in the infidells' possession ; and no salvage to be paid, only reasonable wages to those who took paines, &c.—*Add. MSS.* 18206, f. 108.

The effect of Sir Leoline Jenkins' report is as follows :

There is no law or custom entitling the landowner to salvage or groundage ; the fact that the ship was in the possession of the captors for more than twenty-four hours does not deprive her owners of their property ; nor does it entitle the Lord Admiral to her ; nor is salvage due to the Lord Admiral, since the ship was not recovered by force, but was driven ashore by weather ; cargo embezzled must be restored ; the Moors on board cannot be prosecuted as pirates, they must have the

privilege of enemies, and be ransomed or exchanged ; and the same as to a Spanish renegado on board, but justice may be demanded of his King against him ; as to the English renegado, he may be prosecuted for treason.

1683. Order in Council, as to putting a stop to French depredations in the West Indies.—*P.C. Register* 69, f. 634.

Sir Thomas Lynch, having by his letter dated the 6th of November last to Mr. Secretary Jenkins, and other letters, complained of the depredations committed by certain privateers pretending commissions from the French governor of Hispaniola, and of the unjust seizures made by him and his deputy, especially of one Lenham, that only touched at Petit Guaves to deliver a letter from Jamaica ; as also of those many piracys the French commit dayly, to the totall ruine and interruption of the English trade, having taken eight or ten of our vessells and barbarously used our seamen ; It is therefore humbly proposed by the Committee of Plantations that a memoriall be given to the French Ambassador residing here, as likewise another by the lord Preston to the French court, representing these proceedings, which are not only destructive to trade, but contrary to the treatys between the two Crowns ; and therefore desiring that satisfaction may be made for these injurys, and the power of these commissions given to these privateers limited ; And that, in case the French governor shall continue to grant commissions of this nature, order may be sent to make them distinguish between the English and the Spaniards. And it is further offered that Sir Thomas Lynch

may have directions to seize as many as he can of such vessells and privateers, that have or shall injure his Majestie's subjects; And that he send a list of all those vessells that have been robbed by the French, or by pirates pretending commissions from them, with the names of such as have robbed them.

Which proposall his Majesty having taken into consideration, was pleased to approve, and did order that the right honourable Mr. Secretary Jenkins do prepare and dispatch all such memorialls, letters, and other directions as shalbe necessary for procuring redresse of the injurys and depredations abovementioned, and preventing the like for the future.

1683. Instructions to the Lords of the Admiralty to issue a commission to Sir Thomas Grantham to assist the East India Company against the King of Bantam.—*Adm. Ct. Letter of Marque Bonds* 228, f. 138.

Charles the Second, by the grace of God King of England, Scotland, France, and Ireland, Defender of the Faith &c, To all to whome these presents shall or may come, Greeting. Whereas upon complaint made to us by the Governor and Company of merchants trading to the East Indyes of severall injuries and outrages that have bin done and committed upon their agents and factors in Bantam and elsewhere in the Indyes, as well by the natives as others joyning with them; Wee being willing to protect the said Governour and Company and our subjects in their just rights, and to advance

and promote the welfare and interest of the said company and their trade, wherein the honour and profit of our nation is so much concerned, have by our letters patents dated the first day of this instant August, for the better inabling the said company to repair their losses already sustained at Bantam and elsewhere in the East Indies, and to secure their trade and commerce, and to defend and protect themselves for the future from the wrong, insolencies, and injuries which from time to time hereafter may be unjustly done and offered to them, either by the young King of Bantam, or any other infidell Prince or Princes, or their subjects, within the lymitts of the sayd company's charters granted by us or any of our royall predecessors, and for other good considerations as hereunto moveing, authorized and commanded the commissioners of our Admiralty, or any three or more of them, from tyme to tyme, and as often as need shall require, and they thereunto desired by the said Governour and company, and their successors, to grant and give out commissions to such commander and commanders as they shall name and recommend to our sayd commissioners with our approbation signified under our signe manual, to ayd and assist them and such forces as shalbe levyed by them against the sayd young King of Bantam, and his subjects, or against any other infidell Prince or Princes whatsoever that shall be ayding or assisting them, or shall make warr upon our subjects in any part of the East Indies aforesaid within the lymitts of the sayd companye's charters before mentioned. And whereas the sayd company have recommended to our sayd commissioners Sir Thomas Grantham, knight, commander of the shipp Charles the

Second, of the burthen of about 750 tunns, whome we have approved under our signe manual, dated the 2nd instant, and three of our said commissioners, by vertue of our said letters patents and powers therein, have issued out their warrant, bearing date the fourteenth day of this instant August, 1683, to Sir Leoline Jenkins, knight, judge of our high court of Admiralty, or to his surrogate, willing them forthwith to cause a commission to be issued out of our said high court of Admiralty unto the said Sir Thomas Grantham, according to our said letters patents, with a clause in the said commission to be inserted, injoining the said Sir Thomas Grantham to keep an exact journal of his proceedings, and therein particularly to take notice of all prizes that shall be taken by him, the nature of such prizes, the time and place of their being taken, and the value of them, as neare as he can judge, and also of the station, motion, and strength of the enemy, as well as he can discover from time to tyme from the best intelligence he can gett, and of the same from tyme to time, as he shall have an opportunity, to transmitt an account to the secretary of our sayd commissioners, and to keepe a correspondence with him by all opportunity that shall present; and a proviso that before any such commission issue forth, security bee given in such summe as is required by the treatyes now in force between us and the Princes and States in amity with us that the sayd Sir Thomas Grantham shall not molest or offend any of our friends or allyes. And whereas the sayd Sir Thomas Grantham hath, according to the said warrant, given good security in our said court of Admiralty that he the said Sir Thomas Grantham, his officers and mariners, and such as

shall serve under him, shall not doe or attempt anything against the true meaning of any Article or Articles, treaty or treatyes agreed upon by and between us and any of our allyes touching the freedome of commerce in time of warr, nor against the tenor and true meaning of certaine passeports and certificates under a certaine forme agreed upon by such treatyes between us and our sayd allyes, and shall not doe or attempt any thing against our loving subjects or the subjects of any Prince or State in good league and amity with us, but onely against the sayd young King of Bantam, and his subjects, and other infidell Prince or Princes whatsoever that shal bee ayding or assisting to them, or shall make warr upon our subjects in any part of the East Indyes aforesaid, within the lymitts of the sayd companye's charters; Know yee therefore, That we doe by these presents grant commission to and lycence and authorize the said Sir Thomas Grantham to be ayding and assisting to the said Governour and company of merchants trading to the East Indyes and such forces as shalbee levyed by them against the sayd young King of Bantam and his subjects, or against any other infidell Prince or Princes whatsoever that shalbee ayding or assisting them, or shall make warr upon our subjects in any part of the East Indyes aforesaid within the limitts of the sayd companye's charters. Provided alwayes that the sayd Sir Thomas Grantham shall take and keepe an exact journall of his proceedings, and therein particularly take notice of all prizes which shalbee taken by him, the nature of such prizes, the time and place of their being taken, and the value of them, as neere as hee can judge, as also of the station, motion, and strength of

the enemy, as well as he can discover from time to tyme by the best intelligence he can gett ; and of the same, as he shall have opportunity, transmitt an account to the secretary of our said commissioners, and keepe a correspondence with him by all opportunityes that shall present. In witness whereof wee have caused the great seale of our high court of Admiralty aforesayd to be hereunto affixed. Given at London in our sayd high court of Admiralty the fifteenth day of August in the yeare of our Lord God 1683, and in the thirty fifth yeare of our reigne.

In the same volume (ff. 136, 141) are copies of the authority to the Lords of the Admiralty to grant these commissions ; (f. 143) copy of warrant to issue a similar commission to Captain John Nicholson for the Beaufort ; (f. 146) a statement that similar commissions were issued for the Rochester and the Royal James. The condition of the recognisance entered into by Nicholson is as follows :

The condition of this obligation is such that whereas the above-bounden John Nicholson, commander of the ship Beaufort, of the burthen of about seaven hundred and fifty tonns is by commission out of the high court of the Admiralty of England authorized to aid and assist the Governor and Company of the merchants trading to the East Indies, and such forces as shall be levyed by them against the young King of Bantam, or against any other infidell Prince or Princes whatsoever that shall be aiding or assisting to them, or shall make warr upon his said Majestie's subjects in any part of the East Indies aforesaid within the limitts of the said companye's charters ; If therefore the said John Nicholson, his officers and marriners, and such as shall serve under

him shall not do or attempt anything against the true meaning of any article or articles, treaty or treatyes agreed upon by and between his Majesty and his allyes touching the freedome of commerce in time of warre, nor against the tenor and true meaning of certain passe-ports and certificates under a certain forme agreed upon by such treatyes between his Majesty and his said allyes, and shall not do or attempt anything against any of his Majestye's loving subjects, or the subjects of any Prince or State in good league and amity with his said Majesty, but only against the said young King of Bantam and his subjects, and other infidell Prince or Princes that shall be aiding or assisting to them, or shall make warr upon his said Majestye's subjects in any parts of the East Indies aforesaid within the lymits of the said companye's charters, and also if nothing shall be done by the said John Nicholson or any of his officers, mariners, and company contrary to the true meaning and intent of the said commission, and the commission aforesaid shall in all particulars be well and truly performed and observed as farr as it shall the said captaine and company in any way concerne, that then this present obligation to be void and of none effect, els to remain in full force and virtue.

JOHN NICHOLSON, HEN. JOHNSON, Junior,
JOHN KENTT.

Sigillat' et deliberat' in presentia Will. Joynes,
Jno. Roberts, notarii publici, Johannis Cheeke.

1684. Order in Council explaining a late proclamation as to English goods in foreigners' prizes brought to England.—
Adm. Sec. In Letters 5246, f. 639.¹

His Majesty, being desirous that the treaties between him and the neighbouring princes and states, his allies, be duly observed and executed and in no wise misconstrued in this juncture of time, is pleased to declare that the clause in the latter end of the fifth Article of his late royal proclamation bearing date at Newmarket the twelfth of this month, (purporting that the goods or merchandizes of his own subjects found in prize ships brought up to his Majesty's ports shall, upon due proof, be taken out and restored to the true proprietors), is to be understood onely of the goods and merchandizes of his Majesty's subjects taken in the ships of such of his allies as, being in war with others, have in the treaties now subsisting between his Majesty and them no such clause or provision as makes free goods to become unfree when laden and taken in unfree ships. But as to those of his Majesty's allies who by treaty with him have stipulated and agreed that whatsoever goods or merchandize shall be found laden by his Majesty's subjects upon any ship whatsoever belonging to those with whom such allies are in hostility may be confiscated, it is his Majesty's meaning that the goods or merchandizes of his own subjects so taken and brought up into port, be not taken out of any prize ship, or restored to the proprietors, but be left in the power and possession of the

¹ Also in *S.P. Dom. Various* 12, 26 March 1684.

captor, as well as the proper goods of those he is in hostility with that shall be taken in the same ship. And this his Majesty commands to be strictly observed by his officers in the sea ports of his kingdoms and dominions whom it may or shall in any way concern.

PHI. LLOYD.

1684. Copy of the King's warrant for issuing a commission under the great seale of the Admiralty to Captain John Kastel, commander of His Majesty's ship the Orange Tree, to seize and destroy pirates, freebooters, and sea rovers on the coast of Affrica, within the limits of the Royal African Company's charter; with the forme of the said commission therein.—*Adm. Ct. Letter of Marque Bonds* 228, f. 147.

CHARLES R.

Whereas we are informed by the Royall Affrican Company that the coast of Affrica is greatly infested with pirats, freebooters, and sea rovers, by which the trade of our said company is much impaired, hindred, and discouraged, their ships and goods, (and the lives of such our subjects as are imployed by them) in danger to be lost; and the said Company having besought us to lend unto them the ship, the Orange Tree, (one of our own frigots), and to grant our commission to John Castel, (appointed by them to be commander of the said ship), to seize and destroy all such pyrats, freebooters, and sea rovers, which

he shall meet with within the limits of our said Companye's charter : Now know yee that Wee, being willing to afford unto the said Company our protection, and to prevent the aforesaid mischeifs to them, have lent unto them our said friggot ; And it is our will and pleasure that you forthwith issue under the great seale of our high court of Admiralty a commission unto the said John Kastel of the tenor following, videlicet :

Charles the Second ; by the grace of God King of England, Scotland, France, and Ireland, Defender of the faith &c, to Captaine John Kastel, Greeting : Whereas wee are credibly given to understand by the Royall Affrican Company that the coast of Affrica is greatly infested with pyrats, freebooters, and sea rovers, by which the trade of our said Company is much impaired, hindred, and discouraged, their ships and goods, (and the lives of such of our subjects as are employed in them), in danger of being lost ; and the said Company having humbly besought us to lend them the ship the Orange Tree, (one of our own frigots), and to grant our commission to you, John Kastel, appointed by them to be commander of the said ship, to seize and destroy all such pyrats, freebooters, and sea rovers, which you shall meet with within the limits of our said Company's charter ; And wee, being desirous to prevent the like for the time to come, have at the humble request of the said Royall Affrican Company thought fitt to afford them our protection, and to lend them our said frigot called the Orange Tree ; And wee do hereby authorize and appoint you, and such officers, soldiers, and mariners as shall be under your command, to defend the ships and vessells of our said Company in their trade and navigation

and sailing upon and to and fro' the said coast ; And do hereby give and grant unto you full power and absolute authority to apprehend, seize, and take into safe custody all such pirates, freebooters, and sea rovers, as well of our own subjects as of other nations, which you shall meet with within the limits of our said Company's charter, with their ships and vessells, and all such moneys, goods, wares, and merchandizes as shall be found on board or with them, in case they shall willingly yield themselves ; but if they will not submitt without fighting, then you are by force to compell them to yeild, although it so fall out that by fighting with them one or more of them be hurt, maimed, or slaine in the resistance. And wee do also require you to bring, or cause to be brought, all such pyrats, freebooters, and sea rovers, with their ships and goods, which you shall seize, to a legall triall, to the end they may be proceeded against according to the law and course of Admiralty in such cases. And wee do hereby streightly charge and command all and singular the Vice Admiralls and their deputyes, as also all justices of the peace, mayors, sheriffs, bailiffs, constables, customers, comptrollers, searchers, captaines and masters of ships, keepers of castles and goales and prisons, and all other our officers, ministers, and subjects, as well by sea as land, to be aiding and assisting unto you, the said John Kastel, and all others imployed in the service aforesaid under you in the execution hereof. And wee do hereby injoyne you to keep an exact journall of your proceedings in the premisses, and therein to set down the names of such pyratieall commanders, and of their other officers and company, and the names of the ships and vessells as you

shall by virtue of these presents seize and take, the time and place of their being taken, the number of the men aboard, and of what nation they are, the quantitys of armes, ammunition, provisions, and ladeing of such ships, and the true value of the same, as neare as you can judge ; and from time to time, as often as opportunity shall present, to correspond with the Secretary of our Admiralty, and to transmit to him a just and full account of the same. These presents to continue during our pleasure and no longer. Provided always that, before you issue out such commission, you take security in the said court, in such summe and in such manner as is required by the treatyes now in force between us and the Princes and States in amity with us, that hee shall not offend or molest any of our friends and allyes. For which this shall be your warrant. Given at our court at Winchester, this sixth day of September 1684.¹

By his Majesty's command.

S. PEPYS.

To Sir Leoline Jenkins

Judge of the Court of Admiralty, or his surrogate.

[*Sealed with the great seal of the Admiralty Court.*]

¹ Similar commissions issued in 1687 to Captain Nathaniel Bradley in the *Mary*, and Captain John Bridges in the *Gwynny friggot*.

1686. Order of the king to the captain of H.M.S. Oxford to prevent hostilities between two belligerents in or near Harwich harbour; and to protect from her enemies one of them, then lying there, whilst on her passage to the Downs, and whilst lying there or passing through them.—*S.P. Dom. Naval* 18 (1), f. 8.

JAMES R.

Whereas a certain ship of Algier called the Bustan, Corre Alli commander, has by distress been lately put into and now continues in our port of Harwich, before or near which we are informed of several ships of war of our neighbour Princes or States in amity with us, and hostility with them, now hovering with design of seizing or otherwise acting violence upon the said Algerine, which will not stand with our honour to permit, for that the safeguard and protection of our own subjects, and all others in league and amity with us, (as the Dey and government of Algier in particular now be), passing and repassing to the seas belonging to these our dominions has always been a principal part of the care and concernment of us and our royal progenitors, and that in the pursuance thereof no force, violence, surprize, or offence ought to be done within any our chambers, ports, havens, or roads, or so near to any of them as may reasonably be construed to come within that title, limit, or precinct, such as by ancient settlement all that is contained within a right line drawn from headland to head-

land round the coast of our Kingdom,¹ and in particular from Orfordness to the North Foreland, and from the North Foreland to the South Foreland have been described to be. And forasmuch as it hath been allways understood that where it happens that any ship or ships of war on one side do find any ship or ships of war on the other within any of our said ports or roads, all violence is to be forbore between them during their abode there, and that the ship of war that came in first is to be suffered to depart two tides before the other which came in last, and moreover that the ship of war designing to pursue the other out of our ports is (for prevention hereof) to be for so long time staid and detained; Our will and pleasure is that, taking with you the Sapphire, (whose commander is hereby required to obey your orders), you proceed with the first opportunity of wind and weather to Harwich there to see our honour and right of dominion in these our seas in this particular occasion fairly asserted and maintained by your taking under your charge the said Algerine, and securing her against any act of violence or hostility that may be offered to her from the ships of war of any of our allies, as well during her stay within our said port, or in her passage thence into the Downes² and abode there, and moreover by preventing her being pursued by any of the said ships of war of our allies, which may happen to

¹ See vol. i, p. 353.

² The greater part of the Downs is well outside a line from the North to the South Foreland; and unless the Algerine went inside the sands (which is unlikely), on her passage from Harwich to the Downs, she would for some time be outside the line from Orford Ness to the North Foreland.

lye at the same time within our last mentioned chamber or road within the said Forelands, until two tides after her being departed out of the same; after which they, the said ships of war, are to be left at liberty to pursue the said Algerine as they shall see fit. And for preventing any inconvenience that may arise from any pretence of ignorance of this our right, and the practice of our royal ancestors on the like occasions, with our own resolution conformable thereto in this, you are to use the best and speediest means you can to inform the commander of any single ship, or commander in chief of any greater number of ships of war of any of our said allies, which you shall find either lying within or hovering before or near our said port of Harwich touching our royal determination herein, and your being by us expressly sent for the seeing the same executed, which you are accordingly, with the assistance of our aforementioned ship the *Sapphire* to do by all means in your power, giving notice from time to time of your proceedings to our secretary of the Admiralty for our information. For all which this shall be your warrant. Given at our court at Whitehall this 7th day of October 1686.¹

By His Majesty's command
S. PEPYS.

To Captain Richard Dickenson,
commander of our ship the *Oxford*.

¹ In 1733 the owners of some Dutch ships bound out of the Channel were in fear of an Algerine, who was lying at Plymouth, tallowing and putting on a pair of boot hose (*sic*) tops, for the purpose, as the Government was advised, of pursuing and capturing them. They asked for convoy and protection as far as Finisterre—comme on dit qu'il y

1687. Sentence condemning, as an Admiralty droit, a ship concerned in Monmouth's rebellion.—*Adm. Ct. Libels* 122, No. 170.

. . . Therefore we, Richard Raines¹ . . . [*in common form*] . . . pronounce, decree, and declare that the said ship, formerly called the Dogger, and now the Black Greyhound, laden with arms, guns, munition of war, and other goods by James Scott, late Duke of Monmouth, and his fellow rebels, and then belonging to them, was in the course of the late rebellion against our most serene lord the King in his realm of England instigated by the said James Scott in the months of May, June, or July in the year of the Lord 1685, or in one of those months, rightly and lawfully captured and seized in or about the same month of June, by the ship called the Young Spragg, then in the service of our lord the King, whereof the said Charles Skelton is captain or commander, as she lay at anchor in or near the harbour or bay called the Cobb of Lyme, in the realm of England, within the ebb and flow of the sea, and was afterwards delivered into the possession of our lord the King, or of his officers or ministers; And that the said ship, and her apparel and furniture, and the arms, guns, munition of war, and goods so captured in her as aforesaid, belonged and appertained, at the time of their capture, to the said rebels

en a des exemples, qu'ils ont été reconduit et accompagnés jusqu'au dit Cap. Probably the Dutch were amongst those who were warned in 1686, for the document in the text is amongst the papers relating to the Algerine of 1733.

¹ Judge of the Admiralty 1686-1688.

and traitors, or to their associates. Wherefore we pronounce, decree, and declare that the said ship . . . the Black Greyhound, and her apparel and furniture, and the arms, guns, munitions of war, and all and singular other the goods in her at the time of her capture, so captured as aforesaid, ought of right to be awarded, adjudged, and condemned to our most serene lord the King, and to his Treasury, as the arms, guns, munitions of war, and goods of rebels and traitors to him ; And by this our definitive sentence . . . [*in common form*] . . . we so award, adjudge, and condemn them.¹

Tho. Pinfold.

RI. RAINES.

. . . Idcirco nos, Richardus Raines . . . [*in common form*] . . . dictam navem antehac vocatam the Dogger, modo vocatam the Black Greyhound, armis, tormentis, et ammunitione bellicâ, et aliis bonis onustam, in nuperrimâ rebellione contra dictum serenissimum dominum nostrum Regem in regno suo Angliæ per Jacobum Scott, nuper Ducem Monmuthiæ, ejusque socios, mensibus Maii, Junii, vel Julii anno Domini millesimo sexcentesimo octogesimo quinto, eorumve uno, motâ, et ad dictum Jacobum Scott, ejusque socios rebellatores tunc spectantem, et ad anchoram in vel prope portum vel sinum vocatum the Cobb de Lyme in regno Angliæ tunc jacentem, infra fluxum et refluxum maris, nempe in aut circa mensem Junii anno Domini millesimo sexcentesimo octogesimo quinto prædicto, per navem the Young Spragg, in servitio domini nostri Regis existentem, (cujus dictus Carolus Skelton est præfectus sive capitaneus), rite et legitime captam et deprehensam fuisse, et postea in possessionem domini nostri Regis,

¹ No. 165 in the same File is a similar sentence against the David, a ship concerned in the Earl of Argyll's rebellion ; and *Libels* 123, No. 77, is a sentence against another of Monmouth's ships.

vel officiorum sive ministrorum domini nostri Regis traditam fuisse; Dictamque navem, ejusque apparatus et accessiones, et arma, tormenta, ammuntiones bellicas, et bona in eâdem sic ut præfertur capta ad dictos rebellatores et proditores prædictos, eorumve socios, tempore capturæ ejusdem spectasse et pertinuisse. Quocirca dictam navem antehac vocatam the Dogger, modo the Black Greyhound, ejusque apparatus et accessiones, arma, tormenta, ammuntiones bellicas, et omnia et singula alia bona tempore capturæ prædictæ in eâdem existentia sic ut præfertur capta, dicto serenissimo domino nostro Regi et fisco regio, qua navem, arma, tormenta, ammuntiones bellicas, et bona, rebellatorum et proditorum contra dictum serenissimum dominum nostrum Regem addicenda, adjudicanda, et condemnanda fore de jure debere pronunciamus, decernimus, et declaramus, sicque addicimus, adjudicamus, et condemnamus per hanc nostram sententiam diffinitivam . . . [*in common form*].

1687. Proceedings at an Admiralty court held on board the East India Company's ship Beaufort, in the river Hoogly, for the condemnation of prizes.—*Adm. Ct. Instance Papers* 15.

Hidgly ¹ River,
April 18th, 1687.

At a court of Admiralty held on board the ship Beaufort for examining and condemning severall shippes and goods taken from the subjects of the Mogul by virtue of commissions dated 23 December 1685 from our Sovereigne Lord James the Second, by the grace of God King of England, Scotland, France, and Ireland, defender of the faith &c. Present, Captain John Nichol-

¹ *Sic*.

son, Judge Advocate, Mr. Samuel Griffith, Mr. Richard Trenchfield, Mr. Edward Oxborough :

The ship Hugly, belonging to Hugly and to subjects of the Mogul, burthen about six hundred tonns, eight gunns, taken by Captain John Nicholson at an anchor before the towne of Hugly, the 28th day of October 1686, being deserted by her sailors and nobody in her, nor any goods found on board her. Account of the said shippes gunns and stores are as followeth, viz^t.: Eight gunns, three anchors, two cables, one hawser, masts, yards, and standing rigging.

This court doe adjudge the above said ship to be a lawfull prize, together with all her stores, and value the same to be worth six thousand rupees, one tenth part thereof for the use of our soveraigne lord the king, to be paid into his Majestie's Court of Admiralty in England, the other nine tenths for the use of his Majestie's East India Company, our present imploiers, deducting court charges according to order.

The aforesaid gunns and stores is all that was on board the said ship when taken, to the best of our knowledge. The value of the said shipp and stores, as above, is Rs. 6000 ; the commission of the court at 5 per cent is Rs. 300 ; commission of the court at 5 per cent. is net proceed Rs. 5700. His Majestie's tenth parte of the said neat proceed [Rs.] 570. For the use of the Right Honorable Company rests [Rs.] 5130. [Total] Rs. 5700. Which summe should have been paid into the Right Honorable Companie's cash here, but there were none to buy her, besides the occasion¹ the agent and

¹ These words in the original are repeated by mistake. Several other ships and goods, of considerable value, were condemned at other courts held on the Beaufort.

Councill have for her account [with] the Right Honorable Company in this present expedition. Therefore they are to pay the tenth to his Majestie, and the court charge.

1689. Commission to the Lords of the Admiralty to issue letters of marque against France.—*Adm. Sec. Out Letters* 1045, f. 2.¹

☞ [After reciting that an order for general reprisals had issued, in form similar to that of 1664, *supra* p. 48, the order proceeds:]

. . . These are therefore to will and require you, and by vertue of these presents to authorize you, as our commissioners for executing the office of our high Admirall of England, or any two or more of you, to grant your severall and respective commissions to any such of our loving subjects or others as you shall deeme fitly qualified in that behalfe for the apprehending, seizing, and taking the shipps vessells, and goods belonging to the French King and his subjects or inhabitants within the dominions of the said French King, and such other shipps, vessells, and goods as are or shall be lyable to confiscation pursuant to the respective treaties between us and other princes and states, and to bring the same to judgment in our said Court of Admiralty for proceedings and adjudication and condemnation to be thereupon had, according to the course of Admiralty and lawes of nations, with clauses in the said respective commissions to be inserted that, the same being soe adjudged and condemned, it shall and may be lawfull for the

¹ And *Adm. Sec. In Letters* 5247, f. 16.

merchants and others, to whom such respective commissions shall be granted, to sell and dispose of such ships, vessells, and goods so adjudged and condemned in such sort and manner as by the course of Admiralty and usages in such cases hath been accustomed . . . [*Instructions to be observed, and security taken, as accustomed. Dated 26th June 1689.*]

1689. Opinion of the judges as to the power of the crown to affect by treaty the right of English subjects to arrest and claim their goods in prizes brought to England by a foreign captor.—*Adm. Sec. In Letters 5247, f. 42.*¹

It is this day ordered by his Majesty in Council that the right honourable the Lords Cheife Justices

¹ Also in *P.C. Register* 74, f. 163. Sir L. Jenkins was of opinion that if a belligerent brought his prize into an English harbour, the crown was not by the general law under any obligation to restore it to the other belligerent, being in amity with England. In this case Jenkins was unwilling to express an opinion which involved the interpretation of a treaty with Portugal. 'I am taught,' he says, 'that your Majesty's treaties with foreign nations are not to be any part of our speculation or debate in the Court of Admiralty, but to be interpreted by your Majesty's own royal judgment, with the advice of your honourable Privy Council'; Wynne's *Life of Jenkins*, ii, 732. The same view of the functions of the court was taken in 1654 by the Commonwealth judges. A case was referred by them to Cromwell's decision, upon the ground that the matter was 'of so high a nature, and so consequentiall to this nation, that what evil might arise from a public judgment in these cases may by your judgment be rectified'; *S.P. Dom. Suppl. Interr.* 84, 16th Feb. 1654. In the next century the Court of Appeals, if not the judge of the Admiralty, took quite a different view of their functions.

of the Courts of King's Bench and Common Pleas, the judge of the high court of Admiralty, the Attorney Generall, Solicitor Generall, and Advocate Generall, do meet together and consider of the questions following :

Whether it be consistent with the law of England for the King to make an article in a treaty with another kingdome or state that in case prizes be taken by the privateers of the one kingdome or state, and brought into the ports of the other, they shall in all cases be judged by the respective Admiraltys of that kingdome or state to which the privateers belong, and shall be permitted to go thethur from out of those ports for that purpose ?

Upon which they are to present their opinions in writing to his Majesty on Thursday next at three in the afternoon, and the said Lords Cheif Justices are to give notice to the other persons above mentioned of the time and place of meeting, in order to their giving attendance accordingly.

Memorandum. The said Lords Cheif Justices and the rest brought in their opinion to the said question on the 4th of July 1689 as follows :

May it please your Majesty :

In obedience to your Majesty's order in Councill hereunto annexed wee have met and considered of the question thereby referred unto us, and are of opinion that it is not consistent with the lawes of England to make it an article of treaty with another Kingdome or state that in case prizes be taken by the privateers of the one Kingdome or state, and brought into the ports of the other, they shall in all cases be judged by the respective Admiraltys of that Kingdom or state to which the said privateers belong, and

shall be permitted to go thether from out of those ports for that purpose.

For if any ship or goods be taken by a forreign privateer, and brought into any port of this kingdome, and such ship or goods shall be here claimed by your Majesty's subjects as belonging to them, they have a right by law to have a warrant out of your Majesty's court of Admiralty to arrest the same, in order to try their claimes; and no article in any treaty can exclude them from such their right, or disable your Majesty's court to proceed therein. All which is most humbly submitted to your Majesty's royall wisdom.

J. HOLT, HEN. POLLEXFEN, C. HEDGES,¹
GEO. TREBY, J. SOMERS, THO. PINFOLD.

1689. Report as to the law and practice with reference to the seizure and condemnation of enemy ships arrested before war declared. — *Adm. Ct. Records.*²

In obedience to your Majestie's order in Councill of the 15th of May last, referring unto us the examination of the petition and papers annext of Joseph Herne of London, merchant, on behalfe of himselfe and the owners of the ship St John of Rochell, bound from Guinny to Haver de Grace, and forced by stress of weather in January last into the islands of Scilly, touching the detension of the said shipp and goods, and the imbezlement of several things of value which

¹ Judge from 1689 to 1714.

² Under rearrangement.

were of easy conveyance, wee transmitted the same to the judge of your Majestie's high court of Admiralty, who made report unto us that he had examined the petition and perused the papers and attestations thereunto belonging, and does find that the said ship, being bound from the coast of Affrica to the ports of France, was by stress of weather forced into Scilly about the 9th of January last, before any warr was declared, and then detained by Lieut. Haworth¹ and Capt. Backwell, said to be commander in cheife there, untill this time of open warr betweene the two kingdomes of England and France; but as to what is requisite in equity to bee done in this case for the petitioner's reliefe he represents it cannot bee well directed, unless the manner of treatments which your Majestie's subjects have received from France did appear, as well as the circumstances of the seizure and detainment of the shipp att Scilly.

Hee also represents that hee had mett with some precedents in cases of this sort, viz. the shippes called the Sampson, Salvadore, and St George,² with the silver therein belonging to Spaniards, were taken about the year 1653 before any warr with Spain, and afterwards, the warr being proclaimed, the Spaniards' effects were proceeded against as prizes, and condemned here in England. And that, on the other side, there was a Dutch shipp called the Peace of Rotterdam, taken before the warr with the States Generall, in the year 1672, which was afterwards restored, because she was taken before the warr was proclaimed. And that more instances of each keind might be given; and

¹ Or Kayworth.

² See *supra*, p. 15.

that they were allwayes governed by the severall circumstances that arose, and according to the laws of warr. So that the makeinge the ship prize will be just or unjust according as have been the treatments which your Majestie's subjects have suffered or received from the French king, and more especially in cases of the like nature. For the proof of which there was a certificate produced under the hands of severall merchants in London, bearing date the 4th of July last, who do certify that they have no advice of any English shipp or shippes that have putt into France by stress of weather, or that were in France bound for England, that have been seized or molested by that King or his officers, but those who have been since released ; nor of any English effects seized by that King or his officers because of the present warr betweene the two crownes of England and France, either before the warr was declared here in England or since.

Wee have likewise perused a report from the Commissioners of the Customes transmitted to us by the Lords Commissioners of the Treasury, upon the petition of our Captain Ekins, complayneing that hee was unjustly denyed the possession of the said shipp, which hee called his prize ; wherein it is sett forth that the said shipp came into Scilly by stress of weather, and a considerable time before any warr was declared between England and France, and might have gone freely to her owne port, if not deteyned by the Lieutenant Governor of the said islands upon reasons of his owne, and afterwards by claim of the custom house officers for landing of goods contrary to law, and that whoever may have right at last to the said shipp and goods, yet she haveing been so long in English custody, and

within his Majestie's chambers, the said captain can have no right of seizure.

Upon full examination of the same wee are most humbly of opinion that in equity and justice the said shipp and goods ought to be released and discharged, and that the proprietors should be restored to the entire possession thereof, and that the Commissioners of her Majestie's customes may be directed to admitt the said proprietors to an entry of the said goods, paying your Majesty's customes for the same.

Councill Chamber, Whitehall,
the 14th of September 1689.

All which is humbly submitted.

The John was eventually restored to her owners ; the sentence of the judge of the Admiralty, condemning her to the King, having been reversed upon appeal ; see *P.C. Register* 73, ff. 393, 401.

1689. Letter of marque ; request to friends to receive her and her prizes into their ports.—*Letter of Marque Declarations* 1, f. 23.

The letter of marque concludes as follows :—

. . . And we pray and desire all kings, princes, potentates, estates, and republikes, being our friends and allies, and all others to whom it shall appertaine, to give the said Joseph Reade all aid, assistance, and succour in their ports, with his said ship and company and prizes ; without doing or suffering to be done to him any wrong, trouble, or hindrance ; Wee offering to doe the like when wee shall be by them thereunto desired ; And wee will and require all our owne officers

whatsoever to give him succour and assistance, as occasion shall require.

1689. Order in Council that ships of Hamburg and other Imperial cities trading with France be confiscated.—*Adm. Sec. In Letters* 5249, f. 48.¹

Whereas the ensuing proposall was this day humbly offered to his Majesty in Councill, viz^t. :

That there being severall ships belonging to the city of Hamburg and other Imperiall towns and cities, who have traded into France contrary to the Imperiall edicts forbidding all trade and commerce with the dominions of France, it may be ordered in Councill that all ships that are from Hamburg and other Hanse towns, Imperiall cities or places of the Empire, after the 24th day of Aprill, new stile, being bound for France, or any other part of the French dominions, shall be confiscated, with their lading.

That all ships belonging to the city of Hamburg, Hanse towns and places aforesaid, that are come out of any port of France or any part of the French dominions within the ocean, after the 10th day of May, or from any such ports or places within the Mediterranean after the 20th

¹ See a further order to this effect, of 10 Ap. 1690, *P.C. Register* 73, f. 420, directing Hedges to cause Hamburg ships sailing from there to France since the 24th of April 1689 or coming from France, or any part of the French dominions within the ocean since the 10th of May, or from any such port in the Mediterranean since the 20th of May, or having any French goods on board, and brought into any port in their Majesties' dominions, to be condemned with their ladings; and ordering all commanders of their Majesties' ships to seize all Hamburg ships going to or coming from France. See also above, p. 53.

of May, new style, with merchandize on board laden within the said ports or places shall be confiscated, with their lading.

Which being read and duly considered at the Board, his Majesty was pleased to approve thereof, and did order that Sir Charles Hedges, judge of their Majesties' high court of Admiralty, and other their Majestys' officers whom it may concern, do cause the contents of the said proposall to be put in execution by proceeding against and confiscating all such ships above mentioned, with their lading, which shall be found trading to or from France, or any other part of the French dominions, or from any such ports or places within the Mediterranean, after the severall and respective days limited in the said proposall.

1689. Hedges¹ to Nottingham; as to the condemnation of Hamburg ships for trading with France.—*S.P. Dom. Naval* 1, 22 Oct. 1689.

Having received an order of Councill of the 17th instant for the confiscation of the ships and goods of the Hamburgers, and other subjects of the Empire that have traded with France contrary to the Imperiall edicts, which in my humble opinion cannot, according to the methods prescribed in the said order, be put in execution so effectually for his Majesty's service as I could wish, I thought it my duty humbly to represent to your Lordship the reasons of such my opinion, and withall to submitt to your Lordship's consideration what I conceive will be the best and most justifiable method of proceeding in this case.

¹ Sir Charles Hedges was judge of the Admiralty from 1689 to 1714.

And first, my Lord, to justifie what the order directs, I shall want a further power than is yet granted to me by his Majesty. And secondly, if I had power to proceed, yet I have great reason to doubt that the law will not bear me out.

As to my power, that is to be determined by my commission,¹ which is to condemn all ships and goods belonging to subjects and inhabitants of France as enemy's goods, and likewise all other ships and goods as shall be lyable to confiscation pursuant to treatys betwixt his Majesty and other princes and states; under which the present case is not comprehended, since the Hamburgers are not our enemys, neither is there any treaty that I know of, that provides for such confiscation, betwixt his Majesty and the Emperor.

In the next place, the court of Admiralty is a court of justice, and the judge sworn to administer it to the best of his judgment, and is as much obliged to observe the laws of nations, with respect to the municipall laws of the realm as the judges of the courts at Westminster are bound to proceed according to statutes and the common law; and if the method prescribed for condemnation be not consonant to the laws of nations, as there is reason to doubt, they being the goods of subjects of allyes, I humbly beg your Lordship will be pleased to consider the difficulty that I shall subject myself unto by such proceeding, and, which is worse, that I should be wanting in my duty to the King in not laying before his Majesty what, in my judgment, is the most justifiable and honourable way of executing his Majesty's command.

¹ For this see *Adm. Sec. Out Letters* 1045, f. 12.

There being no law of nations, war, or treaty to govern this matter, nor so much as a notification or premonition from his Majesty to the Hamburgers and the rest, I humbly conceive it is requisite in this case that the Emperor should declare his concurrence or consent to such proceeding against the subjects of the Empire, and that thereupon, (if his Majesty in his royall wisdom shall think meet), a declaration should issue out under the great seale setting forth the reasons of his Majesty's proceedings; and that the said declaration, or else a particular commission, should empower the judge of the Admiralty to proceed against such ships and goods as the goods of enemys, and to condemn the same as lawfull prize to his Majesty.

This, in my most humble opinion, is the most proper course that can be taken to supply the defects of law and jurisdiction, and to justifie the proceedings against the subjects of his Majesty's allies. I heartily desire to do his Majesty the most reall service, and offer this to your Lordship's consideration for no other end, hoping your Lordship will be pleased to represent it accordingly.¹

[Dated, Oct. 22, 1689.]

1689. Hedges¹ to Nottingham; after sentence of condemnation the court has no power to restore a prize.—*S.P. Dom. Naval* 1, 7th Dec. 1689.

Having received an order made in Councill the 2nd instant, upon the petition of George

¹ See *Adm. Sec. In Letters* 5247, ff. 71, 72, as to the order referred to at the beginning of this letter, and an order made in consequence of it; also *infra*, pp. 204, 227.

Remus, setting forth that a certain ship called the Younger Tobias, retaken from the French, and lately condemned in their Majestys' court of Admiralty, doth belong to the subjects of the King of Denmark; upon which petition his Majesty hath been pleased to direct in the said order that I should restore the said ship and her lading to the Danish proprietors, upon payment of salvage according to the late treaty concerning reprisalls, I humbly crave leave to lay before your Lordship that, sentence of condemnation being given, the property of the said ship is thereby absolutely rested in their Majestys, and I am functus officio, and cannot take any further cognisance thereof; and that there is not, with humble submission, any other way to put the effect of the said order in execution but by the petitioner's bringing the case before your Lordship and the rest of the Lords Commissioners of Appeal for prizes, by which means the whole matter will be entire, and your Lordships will have full power to proceed therein as in your Lordships' great wisdom shall seem meet.

[Dated 7th Dec. 1689.]

1689. Letter of marque granted by William Prince of Orange against the French —
Adm. Ct. Prize Papers 73.

This is in Dutch, with a contemporary (faulty) English translation. In substance it is similar to those issued by the English Admiralty. Cf. the documents below, p. 135, a letter of marque from the governor of the Netherlands, and p. 140, from the Admiral of France.

1691. Letter of marque from the governor of the Spanish Netherlands against France.—*Adm. Ct. Prize Papers* 39, (The Margareta).¹

Don Francisco Antonio de Agurto Marquis de Gastanaga, Chevalier de l'Ordre de Alcantara, Gouverneur et Capitain General des Pays-bas etc.

Comme le Roy Tres-Chrétien a décidé la Guerre a Sa Majesté: nous sous l'Advis de ceux de Conseil Supreme de l'Admirauté. Sçavoir faisons, que pour le bon rapport, que faict nous à esté de la personne de Michel Canoen, Avons iceluy au nom de Sa Majesté à la denomination de Jaques Hamilton commis et estably, commettons et établissons par ces presentes, chef capitaine sur un Navire de Guerre du Port de vingtz laistez ou environ, nommé le dragon doré, monté de six pieces d'Artillerie pour l'Armé competement de Gens, et avec icelluy sortir en Mer, et empêcher les courses, et violences des Francois et autres Ennemis: et faire à leur Traficq, et Navigation tout le dommage et hostilité qu'il pourra, à charge et condition expresse de se regler, et conduire au faict de sa presente Commission, selon les Ordonnances et Coustumes du Siege de l'Admirauté en la Ville et Port d'Ostende, et nommement de ne faire aucun Tort, ny Dommage aux Amis Alliez, ou subjects de Sadite Majesté: mais au contraire leur donner, (s'il est besoin), toute faveur, adresse et assistance possible; sur quoy sera ledict Capitaine Michel Canoen tenu de prester le serment és mains de ceux dudict siege de l'Admirauté en ladicte ville et port d'Ostende. Si mandons et ordonnons au nom de Saditte Majesté, à tout ses officiers et Gens de Guerre prions et requerons, ceux de ses Amis Alliez bien vieuillans, de donner audict Capitaine, et à son dict Navire de Guerre, et Gens, et aux Prinsees qu'il aura peu faire, toute retraicté en leur Ports, faveur, adresse et assistance

¹ A printed form.

possible. Faict en la Ville de Bruxelles le douziesme d'avril 1690 Paraphé Cox. . . . Signé Marquis de Gastanaga et contre-signé par Ordonnance de son Excellence P. S. Bertrand, cachetté avec le Cachet du Conseil Supreme de l'Admirauté de sa Majesté en Hostie rouge, et sur le Dos estoit escript ce jourd'huy le quatriesme de Jouillet 1690, est comparu au Siege de l'Admirauté du Roy estably en cette Ville d'Ostende, le capitaine Michel Canoen denommé au blancq de cetté, commandant sur un Navire de Guerre ettant une fregatte nomme le dragon doré du Port de vingt laists ou environ, monté de six pieces d'Artillerie, ou Canon, qui a faict le Serment, et donné la Caution y reprinse. Tesmoing comme clerq juré de l'Admirauté susdit.

Par de Bucc. 26. 91.

31 July 1691 [*Four lines in Flemish ? follow here*].

1691. Order in Council as to embargo and convoy.—*Adm. Sec. Out Letters* 1045, f. 85.

In pursuance of his Majestie's order in Councill dated the 30th of the last month you are hereby required and directed to cause the imbargo to be taken off from all ships and vessells whatsoever within your Vice Admiralty that shall first give bond to the officers of the customes in the ports where they are cleared not to trade into any of the French King's dominions, nor into any part of Ireland not under his Majesty's obedience, nor to any of the parts hereafter specified, viz^t. to any part of America, the dominions of Spaine and Portugal, the Streights, or

¹ A few days after this order some Swedish and Danish ships, which had been taken to the Downs upon suspicion of trading to Portugal and France, were freed; *Ibid.* f. 86.

the Levant, before the departure of the convoys that are or shalbe appointed for those trades, such ships only excepted as have leave from their Majesties' Council to go to any of those places, and such as trade coastwise, or to any place in Ireland under their Majesties' obedience.

[Dated the 2nd May 1691, and addressed to the Vice Admiral of the County of Gloucester and other Vice Admirals of the coast.]

1691. Sentence condemning a ship for trading with the enemy.—*Adm. Ct. Libels* 124, No. 33.

. . . Because from proceedings . . . in this cause . . . we find that the . . . King and Queen's representative has proved his contention that . . . [from January 1689 to March 1691, in common form¹] . . . there was, and now is, open war, hostility, and enmity between our said . . . King and Queen and the King of France, and that all trade between them and between their subjects was, and now is, prohibited by law; And because we find that English lead ought not by law to be exported from England, or supplied or delivered to the enemies of . . . [our said King and Queen]; And because we find that the said Christopher Saunderson in the years and months aforesaid was, and since has been, master of the said ship called the Hopewell of Hull, and had the charge and conduct of her, . . . and that the said ship in the months of January and February . . . 1689 . . . whilst

¹ This sentence is more than usually prolix; superfluous words are omitted, also the Latin original.

lying within the ebb and flow of the sea, and being within the jurisdiction of this court in that part of the high sea that washes the port of Hull and flows into the same, by the order and direction of Saunderson, or at least to his notice and with his knowledge, was loaded with English lead, to the amount of seventy pigs or thereabouts ; And that after loading the same, Saunderson sailed from Hull with the said ship and with the lead so laden in her, and put to sea, but that he did not sail for or arrive at the port of London with his ship and lead, but sailed therewith in time of open war as aforesaid, for the port of Dieppe, within the realm and territory of the King of France, and that there all the lead . . . was by him, or by his seamen, by and with his order and knowledge unloaded from the said ship, and landed [in the realm of] the King of France, in the town of Dieppe, and delivered . . . to certain Frenchmen . . . subjects of the King of France, and was received by them ; . . . And that the said Saunderson traded there with the King of France or his subjects, and supplied them with war material ; And that afterwards Saunderson sailed with his said ship from Dieppe for other places ; And that subsequently the said ship, and her apparel and furniture, were captured and seized by a ship called the Garland, one of the ships of the fleet of our King [and Queen], or engaged in their immediate service, as appears in the process of this cause. Therefore we, Charles Hedges, for the reasons aforesaid set forth in the process of this cause pronounce that the said ship, the Hopewell, and her apparel and furniture, were and are confiscated and forfeited to our most serene lord and lady, the King and Queen, and that they ought as such to

be condemned, and we so condemn them . . .
[*in common form*].

Tho. Pinfold.

C. HEDGES.

Wm. Oldys.

1691. Commission from James II, after his abdication, to Nicholas Roche to capture enemies' ships.—*Adm. Ct. Prize Papers* 90.¹

JAMES REX.

James the Second, by the grace of God King of England, Scotland, France, and Ireland, Defender of the Faith, &c. To our trusty and well beloved Nicholas Roche, Greeting. Wee reposing special trust and confidence in your loyalty, couradge, experience, and conduct in sea affaires, and good affection to us, Doe by these presents give leave, and permitt and suffer you, the said Nicholas Roche, to fitt out and equipp what vessel soever you please with what number and complement of men and armes as to you shall seeme meete, in order to privatier and seaze the ships of all persons whatsoever, onely excepted the subjects of those who are in freindship and allyance with us, or of such as have our royal protection and passeport, or of the Duke of Tyreconnel, our lieuftenant general and general governor of our Kingdom of Ireland. Given at our court at the castle of Saint Germaines

¹ Endorsed, 'A true copy of the commission of the Prince of Wales.' Accompanying it are two commissions from Roche to masters of prizes taken by him, bound for France; also a letter of marque from the Admiral of France for his ship, the *Revenge*.

the 29th day of June, 1691, and in the seaventh year of our reygne.

By His Majesty's command,
BROWNE.

1693. French letter of marque.—*Adm. Ct. Prize Papers* 90 (Revenge).

Louis Alexandre de Bourbon, Comte de Toulouze, Amiral de France, A tous ceux qui ces presentes lettres verront, Salut. Le Roy ayant declaré la Guerre au Roy Catholique, aux Fauteurs de l'Usurpateur des couronnes d'Angleterre et d'Ecosse, et aux Estats des Provinces Unies, pour les raisons contenues dans les Declarations que sa Majesté a fait publier dans toute l'étendue de son Royaume, Pais, Terres, et Seigneuries de son obeissance; Et sa Majesté nous ayant commandé de tenir la main à l'observation desdits Declarations, en ce qui dépend du pouvoir et autorité qu'il a plû à sa Majesté attribuer à nostre Charge, Avons suivant lesdits Ordres exprés de sadite Majesté donné Congé, Pouvoir, et Permission à Matthieu de Wulf, demeurant à Dunkerque, de faire armer et équiper en Guerre une barque longue nommée la Revenge, du port de vingt tonneaux ou environ, à present au Port dudit Dunkerque, avec tel nombre d'Hommes, Canons, Boulets, Poudres, Plombs, et autres munitions de guerre et vivres qui y sont necessaires pour le mettre en Mer en estat de naviguer et courir sus aux Pirates, Corsaires, et gens sans aveu, mesme aux sujets du Roy Catholique, des Estats des Provinces Unies, aux Fauteurs de l'Usurpateur des Couronnes d'Angleterre et d'Ecosse, et autres ennemis de l'Estat, en qulques lieux qu'il les pourra rencontrer, soit aux Costes de leurs Pais, dans leurs Ports, ou sur leurs Rivieres, mesme sur Terre aux Endroits ou ledit Capitaine Wulf jugera à propos de faire les descents pour nuire auxdits Ennemis, et y exercer toutes les voyes et actes permis et usitez par les Loix de la Guerre, les prendre et amener prisonniers, avec leurs Navires, Armes, et autres choses

dont ils seront saisis, à la charge par ledit Wulf de garder et faire garder par ceux de son équipage les Ordonnances de la Marine, porter pendant son voyage le Pavillon et Ensigne des Armes du Roy et les nostres, faire enregistrer le present Congé au Greffe de l'Amirauté le plus proche de lieu où il fera son armement ; y mettre un Rolle signé et certifié de lui, contenant les noms et sur-noms, la naissance et demeure des hommes de son équipage ; faire son retour audit lieu, ou autre Port de France dépendant de nostre Jurisdiction ; y faire son rapport pardevant les Officiers de l'Amirauté, et non d'autres, de ce qui se sera passé durant son voyage ; Nous en donner avis, et envoyer au Secretaire general de la Marine sondit rapport, avec des pieces justificatives d'icelui, pour estre sur le tout ordonné au Conseil ce que de raison. Prions et Requerons tous Rois, Princes, Potentates, Seigneurs, Estats, Republiques, Amis, et Alliez de cette Couronne, et tous autres qu'il appartiendra, de donner audit Matthieu Wulf toute faveur, aide, assistance, et retraite en leurs Ports, avec sondit vaisseau, équipage, et tout ce qu'il aura pû conquerir pendant son voyage, sans lui donner, ni souffrir qu'il lui soit fait ou donné aucun trouble ni empeschement ; Offrant de faire le semblable lorsque nous en serons par eux requis. Mandons et Ordonnons tous Officiers de Marine, et autres sur lesquels nostre pouvoir s'étend de laisser seurement et librement passer avec sondit vaisseau, armes, et équipage, et les Prises qu'il aura pû faire, sans lui donner ni souffrir qu'il lui soit fait ou donné aucun trouble ni empeschement, mais au contraire lui donner tout le secours et assistance dont il aura besoin. Ces presents non valables après un an du jour de la datte d'icelles. En temoin dequoy nous avons signées, et icelles fait contre signer, et sceller du Sceau de nos Armes par le Secretaire general de la Marine. A Versailles le dixieme jour de March, mil six cens quatre vingt treize.¹

L. AL. DE BOURBON, C. de Toulouse, Admiral de France.

¹ The printed copies of these commissions are not always reliable.

1693. Concerning the English that acted under King James' commission.—*Adm. MSS.* 29547, f. 33.

Some English and Irish were taken that had acted under King James' commission; whereupon it was resolved, about July 1693, by the Lords of the Council that they should be tried as pirates, as having no commission from any king or sovereign power whatsoever. Accordingly, about November, the Lords of the Admiralty ordered Dr. Oldys, advocate of the Admiralty, to prosecute them as pirates; who declined the prosecution, and gave his opinion in writing under his hand that they were not pirates, nor ought to be prosecuted as such. Upon which Dr. Oldys was summoned before the Council, and with him Sir Thomas Pinfold, Dr. Newton, Dr. Waller, Dr. Littleton, and Dr. Tindale. The Lords of the Council then present were the Secretaries, the Earl of Nottingham, and Sir G. Trenchard, [the] Duke of Devonshire, Lord Pembroke. The Lord Falkland and Mr. Secretary Trenchard demanded of Dr. Oldys the reason of his opinion.

Dr. Oldys. Pirates are common enemies to all mankind, having no legall authority for what they doe; but these shew a commission signed James Rex, at the court of St. Germains, together with the articles and instructions annexed, in the same forme as our privateers here, giving caution to bring the prizes to judgment in the court of Admiralty before Thomas Stafford at Brest or elsewhere. This does no way agree with piracy nor the character of a pirate, who is

a sea robber, and has thereby lost his right in the law of nations.

Objection. But King James lost his sovereignty in that he has parted with his crown, and consequently with the power of granting such a commission.

Dr. Oldys. A king may be deposed of his crown, but cannot lose his right ; so says Grotius : *jus regni penes ipsum manet utcunque possessionem amisit*. A king, therefore, in case he be deposed of his kingdom, has a right to war ; and, if so, he has all the consequences of war, among the rest a power of granting letters of mart and reprisal.

Trenchard. This may be law in some cases, where the king is deposed, but what if he is abdicated ?

Dr. Oldys. If he did really abdicate, as the Emperor Charles the Fifth or the Queen of Sweden did, then he is no other than a private person, and cannot legally grant any commission. However the question is not here whether King James has really a power to grant such a commission or not, but whether a privateer acting by virtue of a commission *de facto* granted him by King James, not knowing he has abdicated, whether such an error will excuse a *poenâ delicti*, for that a reputable power is equivalent with a real one in such cases.

Trenchard. To clear this, Doctor, we must examine the circumstances of the case, and see if they are such as may occasion and induce a common error, whereby many might be deceived as well as privateers.

Dr. Oldys. 'Tis notorious to all the world that King James was once a lawfull king, and acknowledged to be so by all, that when his

army⁻deserted him, then he fled to his allye in France; that that king received him as such, and furnished him with forces. That he went to Ireland to recover his kingdome, as his declaration sets forth. There he grants commissions; there those who fought under these commissions, and were taken, were not used as theeves and robbers, but as prisoners of war, whereby his claim seemed to be allowed by his very enemies. And those persons who served under him in Ireland were treated as enemies, not as rogues, tho' at that time they acted under no other than King James, and by his commission. That upon their return to France they repaired to king James as their king, and thought him as well in power to grant commission by sea as land, and by reception of commissions from him came out *animo hostili* as privateers, not¹ *animo furandi* as pirates, as appears from their commissions and instructions. That this is a colourable authority remaining in King James, and would excuse those that acted under it from being pirates, since the abdication was never published or heard of in France. And since in pirateing, which deserves *ultimum supplicium* (if proved), all favourable allowance ought to be made, and the generall acknowledgment of a false authority in a forreign country, where the commissions were taken, would free them from a felonious intent in their takeing of it, and consequently from piracy, for it was clear that King James in France was owned and reputed as king, therefore in this case 'tis undoubted law *communis error facit jus*.

Lord Devonshire asked the Doctor whether,

¹ Non, in original.

if Tourville should grant such commissions to Englishmen, they were not pirates that acted under it ?

Dr. Oldys. No. Even though the power of granting such commissions was excepted out of his patent, yet by common intendment, as the Admiral, he could grant such commissions ; and it was not to be presumed that private men could look into his patent, so neither ought to suffer for not seeing of it ; it was sufficient for them that he was reputed to have such a power.

Lord Devonshire. Then, Doctor, what if Pomponne, or any other minister of state grants such a commission ?

Dr. Oldys. Then it cannot be good, because by common presumption a Secretary of State could grant no such commission, that power being proper to the Admiral.

Trenchard and Lord Falkland, (in very great heat). Pray, Doctor, let us deal more closely with you, for your reasons are such as amount to high treason. Pray what do you think of abdication ?

Dr. Oldys. My Lords, that is an ensnareing and odious question. However it may be, I think of the abdication as you doe. For since it was voted, it binds at least in England. But these gentlemen were in a forreign countrey, and knew nothing of it ; and though King James be no king here, yet the colour of authority remaining, and the common acceptance of him as king there, excuses them, as I said before. Also the case of the French men under Anthony, King of Portugall ; the book saith, *tractate non quasi justii hostes sed piratæ qui sub Antonio militarunt &c.* The difference in these cases appears in the reasons for them. The Spaniards

never owned Anthony as king ; here it is quite otherwise, for King James was really and truly a king, and owned to be so by us and all the world.

Sir Thomas Pinfold, being asked what he had to say, declared himself to be of the same opinion with Dr. Oldys.

Dr. Newton and Dr. Waller doubting desired time, and then refused to give their opinions.

Dr. Littleton said that King James was now a private person ; wee had no war with him, nor he with us ; or if he desired to have, he is not in a capacity of makeing war ; he can neither send nor receive embassadours, and those that adhere to him are not enemies but rogues, and consequently these persons are no privateers but pirates.

Dr. Tindale was of the same opinion with Dr. Littleton.

Upon which Dr. Oldys was removed from his place and Dr. Littleton was put in.¹

1693. Opinions as to : 'Whether their Majesties' subjects serving under the late King James' commission ought not to be prosecuted as pyrats.'—*Admiralty, Secretary, In Letters* 3665, f. 9.

They are not in law pyrates, nor ought to be prosecuted as such, as I conceive.

20th May 1693.

THO. PINFOLD.

I am of the same opinion.

WM. OLDYS.

¹ The story is told in *Portland MSS.* (Hist. Doc. Commission), viii, 37.

None can grant commissions for private men of war but they that have summum imperium, or a power of making peace and war for some state or nation. That the late king James, by having justly lost his kingdom, and being in the dominion and power of another, has not onely lost the power of making peace and war, but without his consent has not the power or freedom to send to or receive or protect the persons of any that are sent to him with a publick character to treat about peace or war, and is reduced to the state and condition of a private person. For he that has no government, nor a right to any, and also [is] in the power of another, cannot but be a private person, and has no right to grant commissions to disturb the trade and commerce of a nation, (with whom too he has no war); and those taken serving under his commission are to be dealt with as if they had no commission, and being subjects of their Majesties, are incapable to receive any commission to fight against their fellow subjects, though granted by a just authority, and, in my opinion, may be by the law of nations prosecuted as pirates.

MATT. TINDALL.

I am of opinion that by the law of nations no persons who act in the prosecution of an open war, and against some particular enemies onely, are to be esteemed pirates. A pirate being such an one as commits acts of hostility against all men without distinction, and without the solemnities of war. Wherefore, I humbly conceive that some of their Majesties' subjects, acting upon the seas under the commission of the late King James, against others of their Majesties' subjects, acting under the commission

of their Majesties, cannot be prosecuted as pirates.

RT. WALTON.

This was agreed on by all the King's Councill, both common and civill, that in case their opinions were required, whether it were advisable that these prisoners should be prosecuted for treason or pyracy, their opinions were in the negative, thinking it no ways advisable, and desired me to intimate as much to this honorable Board.

WM. OLDYS.

I am of opinion that their Majesties' subjects, taken fighting under the late King James, his commission, against others their Majesties' subjects upon the high seas may be prosecuted as pyrates.

F. LITTLETON.

1693. Draft of an answer to complaints of Denmark as to the seizure of Danish ships and cargoes. — *S.P. Foreign, Danish Minister*, 1.

The King of Great Britain, having considered a memoriall¹ delivered to him by the Sieur de Lente, envoyé extraordinary from Denmark and Norway, dated at the Hague, the 21st of May 1693, to which a list is annexed of such ships and merchandizes belonging to Danish subjects as have been taken, detained, or confiscated, His Majestie has commanded the following answer should be made to the said memoriall.

That his Majestie's intentions having been

¹ In the same bundle.

always to preserve an intire good correspondence between the two crowns and their subjects, he has accordingly given orders that the treaties for the better establishing the same should be punctually obeyed by his subjects.

As to the ships and merchandizes mentioned in the list, they may be reduced under the four heads following :

1. Ships condemned by the Admiralty and Court of Appeals.

2. Ships condemned by the Admiralty, and no appeal made.

3. Ships restored by the Admiralty, and condemned by the Court of Appeals.

4. Ships dis-charged.

As to those under the first head : It appears upon strict examination that not one of the ships which was taken before the convention was furnished with a passe, according to the treaty made in the year 1670 between the two crowns ; and since the convention and elucidation thereof were made, the Danes have not observed it on their part, neither had any of the said ships passes in the form prescribed, either by the said treaty or convention.

That in the time of war all ships going to and coming from the enemies country, not being provided with passes and certificates according to the treaties in that behalfe made, may, by the laws of nations, as well as by the treaties between the two crowns be examined.

That the masters and owners of such ships and goods therein laden are obliged to prove their property in such ships and lading, and also the designs of their voyages, and that they carry no contraband goods, nor go to any place prohibited by treaty.

That, for want of such proofs, they may be legally confiscated, sufficient time being first allowed for the claimers' appearance, and for bringing their proofs, and instructing their cases ; which was done for all these ships.

That such proofs are by the laws of nations, and by treaty, to be made before the court of Admiralty, where the ships are brought up ; and if a competent time hath been allowed, such proofs as are made afterwards in the country of the claimer, in the absence of the captor, are not to be admitted, or lookt upon to be of any force by any law whatsoever.

As to those under the second head : when any ship or goods shall be condemned in the court of Admiralty for prizes, and the subjects of Denmark think themselves aggrieved thereby, the remedie is prescribed by the treaties ; neither can any demand be made of His Majestie, where reliefe hath not been sought for in the ordinary course, or where justice has not been denied or unjustly delayed.

As to those under the third head ; which are the *St. John*, the *Larwiger*, some goods in the *Mary of Larwick*, and the *Crowned Prince Frederick* ; there appeared sufficient reasons before the court of Appeals, which induced them to condemn the same ; and the claimers being fully heard, no evidence since produced in Denmark, in *absentiâ partium*, can invalidate those proofs and proceedings.

As to those under the fourth head : That when a ship, not being furnished with passes according to the treaty, is brought up and cleared by other evidences than such as were found about the ship, the owners are obliged by law to pay or bear all the costs and charges that

accrue by reason of the bringing up and examination, there being just cause to seize and examine the same; and where there is just cause of seizure, the party that made the same is not lyable to any damages but such as shall happen through his negligence or default.

That the crown of England is not answerable for the actions of the privateers, unless justice be denyed or delayed in such cases, where the parties, who pretend to be injured, shall make it appear that they have been endamaged by the privateer, and shall prosecute them for satisfaction; And His Majestie being informed that the complainants have not hitherto made any demand of the privateers, or prosecuted the parties, through whom they pretend to have suffered, the demand made in the said Memoriall seems contrary to the laws of nations, and differs from the methods of the treaties between the two crowns; and that, as to the credit of the passeports which is so much insisted upon, it is evident the said passeports are seldom made in the prescribed forms, but that they are commonly given *pro formâ*, and for colour, without any solemnity or oath being taken, which can be easily made appear by a great many undeniable instances; And if the Danish subjects had observed the treaty or convention, there would not have been this occasion of complaint; for whenever any passeports and certificates have been produced according to the form agreed, and the matters therein sett forth, have not been plainly contradicted by other evidence of their own, the ships have been forthwith discharged, (though there was just cause for the stop and seizure), and His Majestie has given strict order the same shall be continued to be observed for the future

As to the ships taken by commissions from the crown of Spain ; That although His Majestie shall always be ready to employ his interposition for preserving a good correspondence between the crowns of Spain and Denmark, yet he conceives it doth not any way belong to him to enter into the particulars of that matter.

1694. Instructions for a privateer commissioned by James II after his abdication. — *Hist. MSS. Commission, Stuart Papers*, i, 92.

Instructions to be observed by such as shall arm any ships in course by virtue of the annexed commission.

Before the ship go to sea, her name, tonnage, and burden, and the name of the captain, with the number and names of the equipage belonging thereto, and how many thereof are seamen, with the qualifications of the rest, and the time for which they are armed and victualled, be in a list given to the King's consul or other person deputed for that purpose in the port where they shall come, and to whom as soon as possible after taking any prize they are to give notice thereof.

All ships and goods taken by virtue of the said commission shall be brought into some French port, and shall be kept safely without breaking bulk, till adjudged lawful prize by the court of Admiralty.

If there shall be any difficulty from stress of weather or otherwise in bringing any such prize to France, they are to make the first port they can of any state not at war with the King or the most Christian King, and remain there

till there is an opportunity of bringing the prize into some French port, unless they can obtain a condemnation thereof in such foreign port, and there be permitted to sell the same; in which case certificates of the condemnation and sale, with a list of the merchandize in the prize, and for what each article was sold, and a particular of all the charges incident to the sale, shall be delivered to the King's agent at the place where the commission was received.

Before the said ship shall put out to sea an inspector or *écivain* authorized by the said agent shall be taken on board, and shall be treated as the *écrivains* are in French privateers.

On the taking of any ship the captain is to send such inspector on board in the first boat, and all invoices, charter parties, bills of lading and other papers on board shall be put into his hands to be sealed up and sent by the master of the prize to the said agent to be put into the hands of the Admiralty judge. And the said inspector, before leaving such prize, shall be permitted and assisted to seal up all hatches, doors &c necessary for better securing the cargo.

Before the ship put to sea, security is to be given to our said agent or his deputy for the due performance of the above articles, and for the payment of the tenths or other dues payable to the King.

No person taken prisoner is to be released except where the whole prize is ransomed, in which case the master at least is to be brought away.

1694. De Canales¹ to Trenchard,² asking that steps may be taken to stop the export from Spain in English and Dutch ships of money destined for the enemy.—*S.P. Foreign, Foreign Ministers in England, Spain* 55, 1st March.

Le roy, mon maistre, etant adverty de Cadiz, qu'en deux vaisseaux Hollandois, l'un de guerre, et l'autre marchand, demeurants en cette Bahie la, l'on avoit introduit quantités considerables de l'argent, qu'estoit nouvellement arrivé dans la flotte de Nueva España et dans un autre vaisseau marchand³ presque deux millions de patacons, le tout consigné à des Francois; Sa Majesté m'ordonne expressement à passer offices de plainte avec Sa Majesté Britannique, luy faisant scavoir les vaisseaux et les noms de leurs capitaines, par le memoire cy joint, pour ce que Sa Majesté ait le Conté occouvrir (?) à des pareils attentats, qui non seulement tendent au prejudice de sa couronne, mais aussy de Sa Majesté Britannique, et de tous les alliez, veu que si leur reciproques sujets sont ceux qui aydent les ennemies, et leur subministrent les moyens à maintenir et continuer la guerre avec l'argent du Roy, mon maistre (qu'autrement n'arriveroit à leurs mains), que merveille sera s'il que nos ennemis avec des pareilles renforts ne nous plongent de tous costez. Sa Majesté ne peut douter que Sa Majesté Britannique en prendra si à coeur cette extraction, (à l'utilité des ennemis), qu'elle donnera telles ordres qu'à l'avenir n'arrivent pareilles accidents, et pour ce que Sa Majesté Britannique à eu la bonté de m'ordonner ce jourdhuy que je le fasse scavoir à votre Excellence je la supplie de luy en faire ressouvenir les resolutions y requises.

¹ Marquis de Canales, Spanish Minister in England.

² Sir John Trenchard, Secretary of State.

³ An English ship. The names of the three ships, and of their masters, are given in the memoire attached.

1694. Hedges to Trenchard, as to seizing two Dutch and an English ship suspected of carrying from Cadiz money for the French. — *S.P. Foreign, Foreign Ministers in England, Spain* 55, 22nd March.

Mr. Bridgeman having intimated to me your command, relating to the enclosed letter from the Spanish ambassador and three ships laden with silver, said to be consigned for the use of the French king or his subjects, I have considered the same, and am of opinion that those ships may be seized, in order to the examination of that matter, and to the end, if Her Majesty thinks fitt, some directions may be given to the Admiralty Board to send such orders as shall be requisite; taking especial care that no embezelments or ill usage be committed; for if, after all, it shall be found that the king of Spain hath been misinformed, we shall hear of great complaints from the English merchants, as well as from Holland. And since it is the Spaniards' interest as much as possible to discourage the exportation of the money, and ours to promote it hither, I submit to your consideration with what caution and care this affair is to be handled. The prevention of pillaging will be difficult; but if that can be hindred, there will be no just cause of complaint; for the Ambassador's information is a just cause of seizure, and the case will be despatched in a short time, if the ship's papers be secured, and the examinations of the masters and two or three others of each of the ships' officers be taken immediately upon the seizure

and transmitted hither. And although the 8th Article of the treaty marine with Holland provide that the goods in a free ship shall be also free, yet I humbly conceive that the said Article is to be understood onely in the case when one of the parties is engaged in a war, and the other neuter, and not when they are confederates in a war, as at present ; and with such a construction doth the Convention made with Holland, 12 Aug. 1684, agree. If it be Her Majesty's pleasure that this matter should be vigorously enquired into and prosecuted, it will be also requisite that warrants should issue out of the court of Admiralty to arrest this money, as belonging to Her Majesty's enemies, and that the King's proctor should proceed as in cases of prize goods ; the ambassador's letter, or a copy thereof being sent to him as the ground and cause of proceeding. But if Her Majesty shall be otherwise enclined by any reasons of State, the Spanish ambassador may be answered that it was in his master's power to prevent this exportation, being informed of it ; and if the ships are still remaining in his ports, there is nothing to hinder him from confiscating of such money as shall appear to be consigned to the use of the French, and inflicting other punishments according to the treatyes and the law of nations.

[Signed by Sir Chas. Hedges, dated 22nd March 1694, and addressed to Mr. Secretary Trenchard.]

1694. Sentence, condemning as prize a boat exporting English wool to the enemy.—
Adm. Ct. Prize Sentences 19, No. 44.

. . . And because we find¹ . . . that there was, and still is, open war between England and France, and that all intercourse between them was and is forbidden by the authority of our king and queen ; And because we also find that the export of English wool to the enemy is forbidden ; And because we find that the said Thomas Hoskins was an English subject, and was master of the Sarah and Anne, and had the charge and conduct of her ; And that in February or March 1693 she was lying in Dunge Ness roads, and that by the order, or with the consent of Hoskins she was loaded with eighteen packs of English wool ; And that, after the loading of the wool, Hoskins sailed in her, with the wool on board, from Dunge Ness to Boulogne in France, there being then open war with France ; And that there, by his order, or with his knowledge, the wool was unloaded and delivered to certain French subjects ; and that, in so doing, Hoskins traded with the French king or his subjects ; And that afterwards he sailed for Boulogne, and on his passage the Sarah and Anne was captured by H.M.S. Maidstone ; Therefore we, Charles Hedges . . . pronounce that the Sarah and Anne, for the reasons aforesaid, is forfeited to the King and Queen, and we condemn her accordingly.

Wm. Oldys.

C. HEDGES.

Hen. Newton.

¹ The substance of the verbose Latin sentence, which is omitted, is here given.

1694. Letter of marque for an East India-man.—*Adm. Ct. Miscellanea* 862.¹

WILLIAM R.

William and Mary by the grace of God king and queen of England, Scotland, France, and Ireland, Defenders of the Faith &c, to our trusty and well beloved Captain Page Keble, commander of the ship Tonqueen Merchant, burthen one hundred and eighty tonns, or to any other the commander of the same for the time being, Greeting. Whereas we have thought it necessary for the honour and safety of this kingdome, and other our dominions, to declare war by sea and land against the French king and his subjects, for the redressing (as much as in us lies) of those injuries and oppressions which our subjects have suffered from the French king in severall parts of the world, both in and out of Europe; We, out of our princely care for the safety and protection of the East India trade, wherein the honour and profit of this our kingdome is so much concerned, have thought fitt to authorize and impower, and accordingly by these presents authorize and impower you to fight with, seize, and take by force of arms all such shipps as you shall meet with belonging to the French king, or any of his subjects, and their goods and merchandizes, trading and being in any ports or places within the limitts of the charters granted to the East India Company by any of our royall predecessors, or in any other places whatsoever on this side the cape Bona Esperanza; And if

¹ This is engrossed on parchment, and has the great seal of England affixed. Though not so described the ship evidently was one of the Company's ships.

you are outward bound at the time of such capture, you are to carry such French ships, with their lading, to be tryed in any court of Admiralty in the East Indies ; if homeward bound, to be tryed in our high court of Admiralty here. And we do hereby enjoin you to keep an exact journall of your proceedings, and therein particularly to take notice of all prizes which shall be taken by you, the nature of such prizes, the time and place of their being taken, and the value of them as near as you can judge ; of which, and all other occurrences you shall from time to time send accounts to our commissioners of our Admiralty. And we do further will and command you to take care that all prizes taken by you in your voyage outward be brought into some place in the East Indies where we have a court of Admiralty, together with the ships' papers, and three or four of the chief of the company of such ships, who are to be produced before the judge of the Admiralty, or such as shall be appointed by that court, to be sworn and examined upon such interrogatories as shall conduce to the discovery of the truth touching the interest in or property of such ship, vessell, and goods taken ; And you are to keep in safety all such ships, vessells, and goods, which shall be taken in your voyages outward or homeward, and not break bulk, sell, wast, spoil, or diminish the same before judgement be first given in our Admiralty court in England or the East Indies respectively, that the same are lawfull prize, or untill such court shall by some provisionall order decree the same to be sold. And you are also to take care that the tenth part of all such vessells and goods which shall be taken and adjudged good and lawfull prize as aforesaid,

being the right of the high Admirall of England, be truly paid unto us, or as we shall direct. In witness whereof we have caused our great seal of England to be affixed to these presents. Given at our court at Whitehall, the thirtieth day of Aprill, 1694, in the sixth year of our reigne.

1694. Order of the Lords, in pursuance of a direction from the Queen, to Admiral Lord Berkly to bring in some neutral ships laden with corn. — *S.P. Dom. Naval* 8, . . . April.¹

Whereas we have received advice from Captain Foljamb, commander of Her Majesty's hired ship the Unity, that on the 24th instant off Fair Lee he met with a fleet of Danes and Swedes, under the convoy of two Swedish men of war, and that he has brought three of them to Dover, which are laden with corn; a copy of which intelligence comes inclosed; Your Lordship is hereby requested and directed, in pursuance of Her Majesty's pleasure, signified to this Board, forthwith, without any loss of time, to order some of the English and Dutch ships under your command, as you shall think most proper for this service, immediately to put to sea, together with two fireships, according as by the aforesaid advice, and as the winds have since been, you shall judge best to meet with them, and such as they shall find to be laden with corn, naval stores, or contraband goods, to bring them into Plymouth, Portsmouth, or the Downs, or any other port in England, but if most convenient

¹ See *infra*, pp. 211, 212.

into Portsmouth; taking care that such ships they should bring in, their officers and companies be civilly treated, and their goods and ladings kept from spoil and imbezzlement, giving us an account of their proceedings. And when this service shall be over, you are to order these ships with all possible expedition to join your Lordship in such station as you shall appoint. Dated 27 June 1694.

To the right honourable the Lord Berkly, Admiral of the Blue, St. Hellens.

[Signed by several of the Lords.]

1694. Warrant from the Lords of the Admiralty to the Vice Admiralty Court of Jamaica to hear prize cases.—*Adm. Sec. Out Letters* 1046, f. 157.

In pursuance of their Majesties' pattents under the great seal of England, bearing date the eight and twentyeth day of April last past, a copy whereof is hereunto annexed, these are to will and require their Majesties' Vice Admiralty court of Jamaica, and the Vice Admirall or his deputy or judge or judges of the said court now and for the time being, to take cognizance of, and judicially to proceed upon all and all manner of captures, seizures, prize, and reprizalls of all ships and goods alredy seized and taken, or which hereafter shall be seized and taken between the meridian and longitude of the island of Fyall westward and the continent of America, and in any of the seas, bays, harbours, ports, creeks, or rivers of in or belonging to the said continent of America, and of all ships, vessells, and goods taken elsewhere in the seas by any of their

Majesties' ships of warr, or any of their Majesties' subjects' ships, to the westward of [the] meridian or longitude of cape de Finis Terra in Galatia. Provided such of their Majesties' ships of warr, and such of their Majesties' subjects' ships as aforesaid shall be on their voyages bound to some of their Majesties' islands or plantations in America, and not otherwise; and to hear and determine the same, and according to the course of Admiralty and law of nations to adjudge and condemn all such ships, vessells, and goods as shall belong to the French king, or to any of his subjects or inhabitants within any of his countrys, territories, or dominions, as also such other ships, vessells, and goods, as are or shall be lyable to confiscation pursuant to the respective Articles between their Majesties and other princes and states. Given under our hands and the seal of the office of Admiralty this 4th of May 1694.

1694. Proclamation as to the colours to be worn by privateers.—*Adm. Sec. In Letters 3666, f. 161.*¹

Whereas divers of their Majesties' subjects have of late presumed on board their ships to wear their Majesties' jacks, pendants, and ensigns, which according to ancient usage have been appointed as a distinction for their Majesties' ships, and many times thinking to evade the punishment due for the same, have worn jacks, pendants, and ensigns in shape and mixture

¹ This accompanies a letter of Bramston, judge of the Admiralty, to Burchett, dated 21 Nov. 1702, approving of the reissue of the proclamation for the then war.

of colours so little different from those of their Majesties, as not without difficulty to be distinguished therefrom, which practice is found attended with manifold inconveniences; For prevention of the same for the future, their Majesties have thought fit, with the advice of their Privy Council, by this their royal proclamation, strictly to charge and command all their subjects whatsoever that they do not presume to wear in any of their ships or vessels their Majesties' jack, commonly called the Union jack, nor any pendants, nor any such ensigns or colours as are usually born by their Majesties' ships, without particular warrant for their so doing from their Majesties, or the lord high Admiral of England, or the commissioners for executing the office of lord high Admiral for the time being. And their Majesties do hereby also further command all their loving subjects that, without such warrant as aforesaid, they presume not to wear on board their ships or vessels any jacks, pendants, ensigns, or colours made in imitation of those of their Majesties, or any other flags, jacks, pendants, or ensigns whatsoever than those usually worn in merchants' ships, viz. the flag and jack white, with a red cross, commonly called St. George's Cross, passing quite through the same, and the ensign red with the like cross in a canton white at the upper corner thereof next the staff, nor any kind of pendant whatsoever, saving that for the better distinction of such ships as shall have commissions of letters of mart or reprisals against the enemy, and any other ships or vessels which may be employed. . . . [*Rules for flags to be worn by H.M. Ordnance, Customs, Transport, and other services follow here*] . . . And their Majesties do strictly charge and command that

none of their loving subjects do presume to wear any of the said distinctive jacks unless they shall have commissions of letters of mart or reprisals, or be employed in their Majesties' service by the before mentioned offices respectively. And their Majesties do hereby require the principal officers and commissioners of their Majesties' Navy, the governours of their forts and castles, the officers of their customs, and the commanders or officers of any of their ships, upon their meeting with or otherwise observing any ships or vessels of their Majesties' subjects wearing any flag, pendant, jack, or ensign contrary hereunto, whether at sea or in port, not only to seize or cause such flag, pendant, jack, or ensign to be forthwith seized, but also to return the names of the said ships and vessels, together with the names of their respective masters or commanders unto the lord high Admiral, commissioners for executing the office of lord high Admiral, or the judge of the high court of Admiralty for the time being, to the end that the persons so offending may be duly punished for the same. And their Majesties do hereby command and enjoyn the judge and judges of the high court of Admiralty for the time being that they make strict enquiry, and cause all such offenders to be duly punished. And all Vice Admirals and judges of the Vice Admiralties are also to do the same, and attend [to] the due observation hereof within the several ports and places belonging to their respective precincts.

. . . [*Dates fixed for the coming into operation of the proclamation in different seas. The proclamation itself is dated 12th July 1694*].

1694. Shovell to the Lords, describing an encounter with a Danish man of war, who refused the salute in the Downs.—*S.P. Dom. Naval* 4, 16th August.

In answer to yours of this day's date, these are to acquaint your Lordships, that upon coming into the Downs on Friday the 10th instant, I found a Danes' man of warr riding here, with pendant flying; and not striking them as we passed by him, I sent Mr. Randall, my fourth lieutenant to him to know his reason for not doing it, and to let him know it was expected from him. He made answer to my lieutenant that he would not strike for the English, or for any nation in the world. Which word being brought to me by my lieutenant, I sent Captaine Jenings with Captaine Leake to him, to lett him know I expected he should strike to his Majestie's ships, or he must expect to be forced to it. They could not prevail with him by all their arguments. Some more particular were that the States Generall's shipps did it, notwithstanding our present union, and our instructions obliged us to compell it of all nations that refused it; and the better to induce him to a compliance, added that, if he struck, he should have liberty to hoyst his pendant againe. But notwithstanding this, he positively refused, saying he would have his ship sunk first, but he would defend it as well as he could. Captain Jennings and Captain Leake returning with this obstinate answer, I thereupon ordered Captaine Deane, of the Sterling Castle, immediately to weigh, and come as near him as he could, and oblige

him by fair means or force to strike his pendant and colours as usuall, a copy of which order is enclosed ; and for what was done by Captaine Deane in execution thereof I refer your Lordships to his relation ; only Captaine Deane sent me word twice that the Danish captaine was obstinate, and would not strike. I sent him word againe he must put his order in execution.

[*Enclosed*] Copy of an order from Sir Cloudesly Shovell to Captaine Deane, commander of their Majesties' ship, the Sterling castle.

You are hereby required and directed immediately to weigh, and with their Majesties' ship under your command to come as near as you can to the Danes' man of warr rideing here in the Downs, and oblige him by fair means or force to strike his pendant and colours, as usuall, and as your instructions oblige you. For which this shalbe your warrant. Dated on the Neptune, in the Downes, 10th of August, 1694.

CLOUDESLY SHOVELL.

The deposition that follows is annexed to the above. Other letters of Shovell to the Lords shew that he was anxious to get their approval of his conduct. The Stirling Castle fired a broadside into the Dane and it was returned, several men in both ships being killed. The King of Denmark afterwards disavowed the action of his captain, saying that he had no orders to act as he had, and promising that he should be punished ; *Add. MSS.* 35107, f. 16 ; and see *S.P. Foreign, Danish Minister* 1, 13 Aug. 1694. Another serious encounter with a Swedish man of war occurred in 1704. The Swede and his convoy were brought in but were at once restored ; *Adm. Cl. Prize Papers* 81 ; *P.C. Reg.* 80, f. 165. Instructions to enforce the salute are *supra*, p. 86.

THE DEPOSITION OF CAPT. STRICKLAND
TERRETT (*sic*)

Friday being the 10th August 1694, about six in the afternoon I was sent by Capt. Robert Deane, commander of their Majesties' ship *Sterling Castle*, to go on board the *Dane man of war* which was then riding in the Downs, in company with Major Edward Bowyer, Capt. Thomas Gaughen, and Lieut. William Hamilton, our 2nd lieutenant, who was ordered to desire him to strike his pendant, to hear what answer the captain of the *Danes man of warr* would returne, which was as followeth viz.

That he would not strike for no man in the world, for he had orders from his king not to doe it, and that he would sink before he would strike. Then Lieut. William Hamilton told him that his captain had an order from Sir Cloudesly Shovell to oblige him to strike by force. Then the captain of the *Danes' man of warr* said that if the flagg officer would give him from under his hand that he had an order from King William and Queen Mary to make him strike his pendant, he would consider on it in 24 hours.

Then Lieut. Hamilton told him that if he would strike his pendant, his captain had ordered him to shew him his orders (upon honour) which he had from the flagg officer, but he said he would not strike for that. Then he told him that night was comeing on, and if he would not strike his pendant, he would be aboard of him with our ship and strike it for him.

Then the captain of the *Danes' man of warr* said he would be ready to receive us ; likewise he said that the agreement between the king of Sweden and his king was that he should wear

the pendant outward} bound, and the Sweed homeward bound, and he that hurted the Sweed, hurted him, and he that hurted him hurted the Sweed. Dated on board their Majesties' said ship the 17th August 1694, in the Downs.

STRICKLAND TYRWHITT.

1694. Sentence for restitution of a ship recaptured from the enemy, on payment of salvage.—*Adm. Ct. Libels* 125, No. 204.

. . . Therefore we, Charles Hedges . . . [*in common form*] . . . for all intents of law pronounce, decree, and declare, that the ship Dolphin whilst sailing upon her voyage from the port of New York, in foreign parts, to the island of Jamaica, was captured by a French privateer called the Jersey, whereof Du Boisson of Navarre was master and captain, and that after remaining in the possession of the Jersey for fourteen days, she was recaptured by a Dutch privateer called the Mount Ætna, whereof John Barenson is or lately was master, and brought to the port of Plymouth, and after lyeing there for some time, she became unseaworthy ; And by reason thereof she, together with her apparel and furniture, and the goods, things, wares, and merchandise, laden in her were, by the order and for the use of the said John Barenson, sold ; and the money arising from the sale came to the hands of the said John Neel, and is now in his possession ; And that the said ship, gear, and goods, which are specified in the schedule annexed to these presents, at the time mentioned in the pleadings, that is to say, before and at the time of their

capture and recapture, belonged to the aforesaid Cornelius Jacobs [and 12 others], and that they were and are subjects of our most serene lord the King, and are the true and lawful owners of the aforesaid goods to all intents of the law. And by this our definitive sentence we pronounce, decree, and declare that the aforesaid ship the Dolphin, and her apparel and furniture, and all and singular the goods, things, wares, and merchandise laden in her and specified in the schedule annexed to these presents, or the money or proceeds arising from the sale thereof ought of right to be delivered and restored to the aforesaid Cornelius Jacobs [and others], or to their lawful attorneys and assigns, or to one of them, for their use, after deduction of one half thereof, or of the proceeds thereof on account of salvage to be paid in that behalf, and of costs lawfully due.¹

Steph. Waller.

C. HEDGES.

1695. Raynsford² to the Lords of the Admiralty, as to a valuable prize taken by a non-commissioned captor.—*Adm. Sec. In Letters* 3661, 29th January.

The 10th present the judge of the Admiralty condemned to his Majestie, as perquisites of the Admiralty belonging to your Lordships, a French prize called the Bonaventure, burthen about 300 tuns, seized in the river of Beazoa, in Guinea, by Captain John Broome, commander of the America Merchant, without a commission or letters of marque. Said ship is reported at

¹ Latin sentence omitted.

² Receiver of droits.

seizure to be worth 30 thousand pounds by the attestations in the court of Admiralty. I find her of great vallue, haveing then on board 2 chests about three foote in length, 16 inches in breadth, and 16 inches depth, with gould and silver, about 3 tuns of elephants' teeth, 4 tuns of bees' wax, 40 pieces of Holland duck, 165 negros, and 40 they tooke from the shore. He carried all to Jamaica. I believe the Affrican Company's agent hath been very instrumentall in this business. This is a great concerne, and of that nature I shall on all occasions apply myself to your Lordships for your advice and directions. I have heard my Lord Rumney hath pretensions to her by a grant from their Majesties. I have heard he had a grant for prizes in the West Indies, but I hope it is not soe extensive as to Affrica. Your Lordships ought to be satisfied before anything be parted with to him, as I believe the judge will before he give any such directions. I also heard my Lord Rumney hath great pretensions against Sir William Phipse's government of New England for prizes by vertue of said grant. Captain Brome above hath given baile to an arrest on account of his prize ; soe the business lyes before the judge of the Admiralty, for his inspection and determination ; and if your Lordships thincke fitt, it may be well to direct 2 or 3 of the Committee of the Affrican Company to attend your Lordships, to acquaint you of this matter, as I find there is occasion. According to my duty I shall acquaint your Lordships of all proceedings.

1695. Order in Council for letters of marque for the Caermarthen Galley ; report of the Lords as to granting them to traders. —*P.C. Register* 76, f. 142.

Upon reading this day¹ at the Boord the humble petition of Captain John Jones, commander of the ship Caermarthen Galley, burthen one hundred tons, 20 guns, and 40 men, bound for Cadiz, setting forth the services performed by him on board the said ship, when he was furnished with letters of mart ; and that, upon a former petition for receiving them, the Lords Commissioners of the Admiralty reported that they could not advise the granting thereof, with liberty to trade at the same time ; but expressed no reasons for the same ; and therefore praying a special order for letters of mart, to enable him in his intended voyage and way of trade to annoy the enemy and take their ships, as occasion shall offer ; It is ordered by their Excellencies in Councill, That this petition be sent to the Lords Commissioners of the Admiralty, who are to returne to this Boord on Thursday next in writing their opinion touching the granting of letters of mart to trading ships, with their reasons for such their opinion.

Upon further consideration this day² had at the Boord the petition of Captain John Jones for letters of mart for the Caermarthen Galley, burthen two hundred and ten tons,³ carrying twenty guns, and forty men, bound for Cadiz, together with protection for the said men, as

¹ 30th May 1695.

² 26th June 1695 ; see the next document.

³ In Jones' petition she is described as of 100 tons.

also of a report of the Lords Commissioners of the Admiralty in this matter, dated the 12th of July 1694, and again presented to this Boord the 13th instant, wherein they declare their opinion that letters of mart may be granted to all merchants ships of 200 tons or upwards which shall carry twenty or more ordnance, Provided that one half the ship's company at least be landsmen; It is ordered by their Excellencies in Council, That letters of mart be granted to the Caermarthen Galley, with protections for her said complement of men, as being within the rule prescribed in the above mentioned report; so as the petitioner conform himself to the Regulations conteyned in their Majesty's proclamation of the 12th of July 1694, concerning colours to be worne on board ships. And the Lords Commissioners of the Admiralty are to cause all necessary directions to be given herein accordingly.

1695. Order in Council as to letters of marque for merchant ships, and the guns to be carried by them.—*P.C. Register* 76, f. 148.

Whereas upon the humble petition of severall merchants of London praying letters of mart to enable and encourage them, as well to defend themselves, as [to] annoy the enemy, the lords commissioners of the Admiralty, (to whom the said petition was referred), did the 13th instant present to the Board their report made on the like occasion the 12th of July 1694, to which they referre themselves, therein declaring their opinion that letters of mart may be granted to all merchants' ships of two hundred tuns and

upwards, which shall carry twenty or more ordnance, provided that half the ship's company at least be landsmen. It was thereupon thought fit, and accordingly ordered by their Excellencies in Councill that the said lords commissioners of the Admiralty do from time to time grant letters of mart to such persons as shall desire the same for trading ships of two hundred tuns burthen or upwards, and carrying twenty or more pieces of ordnance, provided that half the complement of each ship's company be landsmen; and taking especial care that the captains and commanders of such ships be obliged duly to observe and conforme themselves to the regulations conteyned in their Majesties' proclamation of the 12th of July 1694 concerning colours to be worne on board ships.

1696. Lords of the Admiralty to Hedges, as to a French ship seized by a privateer in Limasol harbour.—*Adm. Sec. Out Letters* 1047, f. 34.

Whereas his Majesty has been acquainted by the Turkey Company that captain Charles Pickering, commander of the Charles privateer, did lately attack and seize a French merchant ship of great value in the island of Cyprus, under the command of the castle of the port of Lymasol, belonging to the Grand Senior, you are therefore hereby required and directed to cause the bond given upon the granting of letters of marque to the said ship Charles to be forthwith put in execution; And you are to report to us your opinion what methods may most properly be taken for preventing the like disorders for the

future, either by additional instructions, encreasing the security to be given or otherwise.

[Dated 2nd Nov. 1696.]

1696. Sentence condemning a prize to the captor in accordance with 4 Will. & Mary, c. 25.—*Adm. Ct. Prize Sentences* 21, No. 4.¹

. . . Therefore we, Charles Hedges . . . [*in common form*] . . . pronounce, decree, and declare that the aforesaid ship called the St Peter of Nieuport, whereof Peter Vanstable is master, and her apparel and furniture, and the goods, things, wares, and merchdises, on board her at the time of their capture under the said letters of marque or commission of war granted as aforesaid to him James Lempriere, were rightly and lawfully captured. Therefore we pronounce, decree, and declare that the said ship called the St Peter of Nieuport, and her apparel and furniture, and the goods, things, wares, and merchandise captured and seized on board her, after deducting a fifth part of the French goods on board her, (which [*fifth part*] we adjudge to our most serene lord, William the Third, King of England, in accordance with the Act of Parliament in that behalf made and provided), ought of right to be awarded, adjudged, and condemned to the aforesaid James Lempriere, captain or

¹ Other sentences in the same volume (as No. 14) condemn ship and goods to the king '*qua bona hostium*'; others (as Nos. 14 and 49) state the number of guns in the prize for the purpose of calculating gun money as directed by the Act; and others (as Nos. 27 and 140) condemn ship and goods as Admiralty droits. Cf. the sentence of 1691, *supra*, p. 137.

commander of the aforesaid private man of war called the Three Eagles ; And by this our definitive sentence, or this our final decree, which we pass and promulgate by these presents, we so award, adjudge, and condemn.

W. Clements.

C. HEDGES.

. . . Idcirco nos, Carolus Hedges . . . *in common form*] . . . antedictam navem vocatam the St Peter of Newport, (cujus Petrus Vanstable est magister), ejusque apparatus et accessiones, ac bona, res, merces, et mercimonia in eâdem tempore capturæ eorundem, existentia, vigore dictarum literarum marcæ vel commissionis bellicæ eidem capitaneo Jacobo Lempriere sic, ut præfertur, concessæ, rite et legitime capta et seizita fuisse pronunciamus, decernimus, et declaramus. Dictam igitur navem vocatam the St Peter of Newport, ejusque apparatus et accessiones, ac bona, res, merces, et mercimonia in eâdem capta et seizita, (deductâ prius quinta parte bonorum Gallicorum in eâdem, (quam serenissimo domino nostro Gulielmo Tertio, Angliæ regi, juxta actum parlamenti in eâ parte editi et provisi adjuncticamus), præfato Jacobo Lempriere, capitaneo sive præfecto navis privatæ bellicæ vocatæ the Three Eagles prædictæ, pro predâ legitimâ addicenda, adjudicanda, et condemnanda fore de jure debere etiam pronunciamus, decernimus, et declaramus, sicque addicimus, adjudicamus, et condemnamus per hanc nostram sententiam diffinitivam, sive hoc nostrum finale decretum, quam sive quod ferimus et promulgamus in hiis scriptis.

1697. Sentence, condemning a non-commissioned captor in the value of an enemy ship and cargo not accounted for.
—*Adm. Ct. Prize Sentences* 21, No. 140.

. . . And because we find also . . . that a ship called the Bonaventure, and her apparel

and furniture, and the goods, things, wares, and merchandise in her . . . were captured and seized upon the high sea by the said John Brome in and with the said trading ship called the *America Merchant*, as a ship and goods of the French king ; And that at the time of the capture there was and still is open war and hostility between our said lord the king and the French king ; And that the said ship called the *Bonaventure*, and her apparel and furniture, and the goods, things, wares, and merchandise in her, legal proceedings having been first had and taken against them, were condemned and adjudged to our said lord the king as enemy goods and lawful prize, and as perquisites of the Admiralty, and that the said sentence is final and conclusive. And because we find also that the said John Brome took into his own hands the aforesaid ship the *Bonaventure*, and her apparel and furniture, and the guns, negroes, and other goods, things, wares, and merchandise captured and seized in her, all specified in the schedule annexed to these presents, and that the same came into his possession ; And that he, John Brome, wilfully, wrongfully, and in fact disposed of the same at his will, without rendering or making, as of right he should have, any account or reckoning thereof to our said lord the king, or for his use : And because we also find, from lawful proofs made before us and appearing in this cause that the said ship called the *Bonaventure*, and her apparel and furniture, guns, negroes, and all the other goods, things, wares, and merchandise specified in the schedule annexed to these presents, in the year and months mentioned in the libel given in this cause, amounted in value to the several sums of lawful English money specified in the

aforesaid schedule ; Therefore we, Charles Hedges . . . pronounce, decree, and declare that the aforesaid John Brome ought of right to be condemned in the said several sums mentioned in the schedule annexed to these presents, in respect of the value of the said ship, and her apparel and furniture, and the guns, negroes, and other goods, things, wares, and merchandise specified in the said schedule, to be paid to our said lord the king, or his representative, for his use, and we so adjudge and condemn him . . . [*Condemnation also in costs.*]

Tho. Pinfold, H. Littleton,
Hen. Newton.

C. HEDGES.

. . . Et quia etiam in venimus . . . navem quandam vocatam the Bonaventure, ejusque apparatus et accessiones, et bona, res, merces, et mercimonia in eadem . . . super alto mari per dictum Johannem Brome in et cum dictâ nave mercatoriâ suâ vocatâ America Merchant in usum dicti domini nostri Regis capta et seizita, qua navem et bona Regis Francorum, ejusve subditorum ; et tempore seizure eorundem fuisse et modo esse bellum, hostilitatem, et inimicitiam inter dictum dominum nostrum Regem et dictum Regem Francorum, eorumque respective subditos ; Dictamque navem vocatam the Bonaventure, ejusque apparatus et accessiones, et bona, res, merces, et mercimonia in eadem, post judicialem processum contra eadem habitum et factum, dicto domino nostro Regi pro prædâ legitimâ qua bona hostium suorum, et qua perquisita Admiralitatis Angliæ condemnata et adjudicata, et dictam sententiam in rem judicatam transiisse. Et quia etiam in venimus dictum Johannem Brome antedictam navem vocatam the Bonaventure, ejusque apparatus et accessiones, et tormenta, nigros Mauros, Anglice negroes, aliaque bona, res, merces, et mercimonia in eadem capta et seizita, in schedulâ præsentibus annexâ mentionata, in manus suas cepisse, et eadem ad possessionem suam pervenisse ;

Dictumque Johannem Brome de eisdem propriâ suâ temeritate ad libitum suum de facto disposuisse, et nullum rationem sive computum eorundem vel alicujus partis eorundem dicto domino nostro Regi, vel ad ejus usum, reddidisse vel restituisse, prout de jure tenebatur et tenetur; Et quia etiam ex probationibus legitimis coram nobis in hac causâ factis et apparentibus invenimus dictam navem vocatam the Bonaventure, ejusque apparatus accessiones, tormenta, nigros Mauros Anglice Negroes, aliaque bona, res, merces, et mercimonia in schedula presentibus annexâ mentionata, anno et mensibus in hâc causâ libellatis, ad separales summas et valores legalis monetæ Angliæ in schedula prædicta specificatas extendisse et extendere;¹ Idcirco nos, Carolus Hedges . . . præfatum Johannem Brome in dictis respective summis, in schedulâ presentibus annexâ mentionatis, pro valore dictæ navis, ejusque apparatus, accessionum, et tormentorum, nigrorum Maurorum (Anglice negroes), et aliorum bonorum, rerum, mercium, et mercimoniorum in dictâ schedulâ specificatorum, dicto domino nostro Regi, seu parti suæ in ejus usum solvendis condemnandum fore de jure debere pronunciamus, decernimus, et declaramus, sicque condemnamus et adjudicamus . . . [*Condemnation in costs*].

1697. Petition of the East India Company
for licence to capture pirates and to erect
a Court of Admiralty in the East Indies.
—*Add. MSS.* 25098, f. 473.²

To the Right Honorable the Lords Commissioners for executing the office of Lord High

¹ The total value was £3505; the ship, £420; the negroes (at £17 each), £2805; two tons of elephants' teeth, £280; besides sixteen hundredweight of beeswax, of which the value is not given.

² Enclosed in a letter from the Lords of the Admiralty to Sir Charles Hedges, asking him to consider and report upon it.

Admiral of England, the humble petition of the Governor and Company of Merchants of London trading to the East Indies humbly sheweth, That of late years great numbers of vicious and ill principled men have set out severall ships from Europe and the West Indies on purpose to robb and seize the shippes of all nations they can meet with in the Indian seas, and in pursuance of the said villainous designes have already committed so great robberye and outrages that the natives of those parts finding their ships robbed and navigation interrupted by pyrates under English colours, (and in truth great part of them are subjects of the crown of England), have severall times seized the factorys of your Petitioners and put their factors and servants in irons, to their great detriment, nor do your Petitioners yet know whether the Mogull hath not seized all the effects of the Petitioners in India to make good the damage his subjects have sustained by the late pyracys committed by Every and others ; That your petitioners have advice that severall ships are gone out, and more are fitting out, from our Plantations in the West Indies on the same designes, and unless some stop be put to these villanous practices your petitioners have too great reason to apprehend the continuance of such practices will so far exasperate the Indian nations that they will utterly destroy the factors¹ and effects of your petitioners, and totally forbid all commerce between them and the English nation ; That your petitioners are on their part ready to do whatever they can to suppress theise pyratieall practices, nor will they spare any costs effectually to put an end to the said violations of the laws of

¹ *Sic.* Qy. factorys.

all nations, as far as they shall be enabled, Your petitioners therefore humbly pray your Lordships would please to empower the petitioners' ships and officers to seize and take all pyrates infesting those seas within the limits of the Company's charters, and lykewise to empower them to erect a court of Admiralty in those parts to trye and condemn such pyrates as they shall take, or in such other manner as your Lordships shall judge most effectuall for suppressing and preventing the like villany in time to come.

1698. First decree against a ransomed ship for non-payment of the ransom money, at the instance of her master, who was detained by the captor as a hostage.—
Adm. Ct. Libels 126, No. 107.

Before you . . . Charles Hedges . . . [*in common form*] . . . John Munden, late master of a ship called the Reyner, against the said ship alleges and propounds: That in the months of January &c . . . 1695 and 1696 . . . John Hodder, John Blagrove, and William Reyner were, and now are the lawful owners of the said ship, and of her apparel and furniture; And that at some date during that period they engaged and appointed Munden to be her master or commander; And that during the same period she was engaged upon a voyage from the port of Weymouth, in England to Virginia in parts overseas; And that she sailed from Weymouth, and on the 7th of October [1696], during her appointed voyage, was seized and captured by a French privateer called the Phillipicene of St Malo, whereof Louis Daincon was captain; And that

the said Captain [Daincon] took possession of her, and of her apparel and furniture, and of all and singular the goods, things, wares, and merchandise in her ; And that, whilst he was [so] in possession of her, Munden treated with him [Daincon], upon the high sea and within the jurisdiction of the high court of Admiralty of England, for the ransom of the Reyner and her apparel and furniture and all and singular the goods, things, wares, and merchandise in her ; And that an agreement and contract was made between them for the ransom of the said ship, and her apparel and furniture and the goods, things, wares, and merchandise in her, [namely] that Munden should pay, or cause to be paid, to Daincon the sum of £170 sterling, and give himself up as a prisoner or hostage for the payment of that sum ; And, further, that Daincon carried Munden to St Malo, where he put him into prison, and that he [Munden] has ever since been, and still is, in prison ; And the Munden drew a bill of exchange upon the said John Hodder, one of the owners of the Reyner, for the sum of £170, for her ransom, and [a further sum of] £15 for his own necessary expenses, which were owing to the keeper of the goal and others, which sums were to be paid to one Gilbert Heathcott ; But that Hodder never paid the bill, and that Heathcott caused it to be protested ; And that, by reason of the premises, Munden is still in prison, where he has lain for twenty months, his prison expenses now amounting to £80, and more ; And that by reason of his imprisonment he has suffered loss to the amount of £100, and that his loss will daily increase, and that it now amounts to £350 of lawful English money ; And that these sums were and now are owing to him, the said

John Munden ; And that . . . [*the owners of the Reyner refuse to pay the £350 or any part of it, and Munden has therefore caused her to be arrested. First decree passed against the ship, in default of appearance by the owners*].

S. Waller.

C. HEDGES.

Coram vobis . . . Carolo Hedges . . . [*in common form*]. . . . Johannes Munden, nuper magister cujusdam navis vocatæ the Reyner, contra dictam navem . . . allegat et proponit, Quod mensibus Januarii . . . [1695 et 1696] . . . quidam Johannes Hodder, Johannes Blagrove, et Gulielmus Reyner fuerunt, et modo sunt, legitimi proprietarii dictæ navis, ejusque apparatus et accessionum, et infra tempus prædictum præfatum Johannem Munden in magistrum sive gubernatorem dictæ navis the Reyner constituerunt et locarunt, et quod infra tempus prædictum dicta navis sub regimine dicti Johannis Munden, ex directione, saltem cum consensu proprietariorum prædictorum in quoddam viagium a portu de Weymouth in Anglia ad Virginiam in partibus transmarinis designata fuit ; Et infra tempus prædictum a dicto portu velificavit, et in cursu suo navali designato decimo septimo die mensis Octobris [1696] fuit per quandam navem privatam bellicam Gallicam vocatam the Phillipicene de St Mallo, (cujus Ludovicus Daincon fuit capitaneus), capta et seizita dictus capitaneus dictam navem vocatam the Reyner, ejusque apparatus et accessiones, omniaque et singula bona, res, merces, et mercimonia in eâdem possedit, et in possessione eorundem existens præfatus Johannes Munden cum dicto Ludovico capitaneo navis privatæ bellicæ, super alto mari, et infra jurisdictionem supremæ curiæ Admirallitatis Angliæ, de et super redemptione dictæ navis the Reyner, ejusque apparatus et accessionum, et omnium et singulorum bonorum, rerum, mercium, et mercimoniorum in eâdem tractatus fuit, et inter eos conventum et concordatum fuit pro redemptione dictæ navis, ejusque apparatus et accessionum, et bonorum,

rerum, mercium, et mercimoniorum in eadem, quod præfatus Johannes Munden solveret, seu solvi faceret præfato capitaneo Ludovico Daincon summam centum et septuaginta librarum sterlingarum, et submitteret se captivum sive hostagium pro solutione summæ prædictæ; Et in super allegavit præfatum capitaneum Ludovicum Daincon præfatum Johannem Munden prædictum ad portum de St Malo advexisse, et eum in carcerem misisse, ubi ille a tempore prædicto remansisse et adhuc remanet; Dictumque Johannem Munden in dictum Johannem Hodder, unum proprietariorum dictæ navis billam excambiæ pro solutione summæ centum et septuaginta librarum pro pretio redemptionis dictæ navis, ejusque apparatus et accessionum, et quindecim librarum pro suis expensis necessariis custodi carceris et aliis debitis solvendis cuidam Gilberto Heathcott traxit; Dictus tamen Johannes Hodder dictam billam excambiæ non solvit, et præfatus Gilbertus Heathcott dictam billam protestandam procuravit; et ratione præmissorum præfatus Johannes Munden in carcere prædicto remanet, et per spatium viginti mensium remansit, et expensæ citra incarcerationem prædictam modo ad summam octoginta librarum et ultra extendunt, et damnum ratione incarcerationis suæ ad summam centum librarum sustinuit, et plus indies sustinebit, in toto extendent ad summam trium centum et quinquaginta librarum bonæ et legalis monetæ Angliæ; Quodque dictæ respective summæ præfato Johanni Munden fuerunt et sunt debitæ; Dictosque¹ Johannem Hodder, Johannem Blagrove, et Gulielmum Reyner ad solvendum seu solvi faciendum dicto Johanni Munden summam trium centum et quinquaginta librarum prædictarum rogatos et requisitos fuere, et dictam summam, seu aliquam partem ejusdemolvere recusarunt, saltem non solverunt; Unde dictus Johannes Munden . . . [*prayer to be put into possession of the Reyner in common form*].

¹ Grammar is confused.

1698. Order in Council, referring to the Lords a petition for an East Indiaman to have letters of marque, to defend herself.—*P.C. Register* 77, f. 197.

Upon reading this day at the Board the annexed petition of Edward Say, merchant, and others, humbly praying a commission on letters of marque for the ship Buckhurst, burthen 400 tons, with 40 guns, bound on a trading voyage to the East Indies, the better to preserve the said ship from pirates and other enemies, It is ordered in Council that it be, and it is hereby referred to the Lords Commissioners of the Admiralty to examine the matter of the said petition, and to report¹ to this Board what they conceive fit for his Majesty to do therein.

[Dated 11 July, 1698.]

1701. Sentence condemning pirates' goods to the King, as droits of the Admiralty.
—*Adm. Ct. Libels* 127, No. 110.²

. . . Therefore we, George Oxenden . . . [*in common form*] . . . pronounce, decree, and declare that all and singular the things, wares, and merchandize, gold, gold dust, silver, precious stones, and other goods, whatsoever they may be, which are specified in the first of the schedules, other than the goods specified in the second of

¹ Report not found.

² The goods here condemned belonged to Kidd, the pirate. They were seized in the *Quetta Merchant*, and sold by auction at the Royal Exchange. The sale catalogue, giving the prices realised, accompanies the sentence.

the schedules annexed to these presents, were and are, to all intents of law, pirates' goods, and that were piratically captured, and that as such, and as droits of the Admiralty of England, they belonged and appertained to our most serene lord the King, (who is now in enjoyment of the rights of the lord high Admiral), and that they ought of right so to belong and appertain to him, and that they were rightly and lawfully seized and arrested for his use as pirates' goods, and as goods piratically captured. Therefore for the aforesaid reasons, and for other just and lawful reasons appearing in the acts and process of this cause and specially moving us in this behalf, we further pronounce, decree, and declare, that all and singular the goods, things, wares, merchandise, gold, gold dust, silver, precious stones, and other goods, whatsoever they may be, which are specified in the [first] schedule annexed to these presents, having been captured and seized as aforesaid as pirates' goods, (except the goods specified in the second schedule annexed to these presents) ought to be adjudged and condemned [to the King] as pirates' goods, and as goods piratically captured, and as droits of the Admiralty of England, and by this our definitive sentence, or this our final decree, which we pass and promulgate by these presents we so award, adjudge, and condemn the same.

Hen. Newton. GEO. OXENDEN, surrogate.

. . . Idcirco nos Georgius Oxenden . . . *in common form*] . . . omnia et singula res, merces, et mercimonia, aurum, aureum pulverem, argentum, gemmas, aliaque bona quæcunque in primâ schedulâ præsentibus annexâ respective mentionata, exceptis bonis in schedulâ secundâ præsentibus annexâ mentionatis, fuisse ac esse bona

piratarum, ac piratice capta, et qua talia, et qua perquisita Admiralitatis Angliæ ad dictum serenissimum dominum nostrum Regem, (juribus domini magni Admiralli jam fruentem), spectasse et pertinuisse, et de jure spectare et pertinere debere, et in usum dicti domini nostri Regis qua bona piratarum et piratice capta rite et legitime seizita et arrestata fuisse ac esse, ad omnem juris effectum, pronunciamus, decernimus, et declaramus. Ideoque ex causis prædictis, aliisque justis et legitimis in actis et processu hujus causæ apparentibus et nos specialiter in hâc parte moventibus, omnia et singula bona, res, et merces, et mercimonia, aurum, aureum pulverem, argentum, gemmas, aliaque bona quæcunque in schedulâ præsentibus annexâ respective mentionata, et sic, ut præfertur, qua bona piratarum et piratice capta, seizita, et arrestata, (exceptis bonis in secundâ schedulâ præsentibus annexâ respective mentionata), præfato serenissimo dominos nostro Regi qua bona piratarum et qua perquisita Admiralitatis Angliæ adjudicari et condemnari debere pronunciamus, decernimus, et declaramus, sicque addicimus, adjudicamus, et condemnamas per hanc nostram sententiam diffinitivam, sive [hoc] nostrum finale decretum, quam sive quod ferimus et promulgamus in hiis scriptis.

1702. Proclamation ; prize.—*Adm. Sec. In Letters 5249, f. 310.*

ANNE R.

[*After reciting the declaration of war against France and Spain, for the encouragement of seamen serving in her ships and in privateers, Her Majesty, with the advice of her Council declares*]:

That if any ship, vessell, or goods belonging to the enemy, or otherwise lyable to confiscation, shall be seized or taken at sea, or in any of the enemy's ports, havens, or rivers, by any of her Majesty's ships of war, or merchant ships employed

in her service, and shall be condemned and adjudged as lawfull prize to her Majesty, the same, as soon as conveniently may be, shall be appraised, and after due and publick notice openly sold by inch of candle to the best advantage, and, after [*payment of customs duties and other charges*], one half part of the neat proceed of such prize shall be answerable and payd to the flag officers and company of her Majesty's ship of war or merchant ship in her service surprizing and taking the same, or assisting in the taking thereof, to be distributed in such manner as is hereafter directed ; Provided the assisting ships shall have no greater shares thereof than has been accustomed ; But all such ships of war of France and Spain, or privateers of either of those nations which may be fit for her Majesty's service are not to be disposed of till such time as her Majesty shall have the refusall thereof ; And in case her [Majesty] shall take any such ship into her service, the captors shall have ten pounds per gun, and ten pounds per tun for the ships of war, and the whole of such privateers taken as aforesaid, according to appraisement, except one tenth part thereof to the lord high Admirall of England.

That the rewards before given for prizes taken from the enemy by any of her Majesty's ships of war, or merchant ships imployed in her service shall be divided to and amongst the flag officers, captains, officers, and company of such ships so taking the same as followeth, viz. To the captain three eighth parts, unless the prize be taken by a man of war under a flag or flags, in which case the flag officer, or flag officers, shall have one eighth part, to be equally divided between them, and the captain or captains that

took her the remaining two eighth parts among them ; to the lieutenants and master one eighth part ; to the boatswain, gunner, purser, carpenter, master's mate, chirurgion, and chaplain, one eighth part to be equally divided among them ; to the midshipmen, carpenter's mates, boatswain's mates, gunner's mates, corporall yeomen of the sheets, coxwain, quarter master's mates, chirurgion's mates, yeomen of the powder room, one eighth part to be equally divided amongst them ; to the trumpeter, quarter gunners, carpenter's crew, steward, cook, armourer, steward's mate, cook's mate, gun smith, cooper, swabber, ordinary trumpeter, able seamen, ordinary seamen, two eighth parts, to be equally divided amongst them.

[Lists of their crews to be sent in by captains to the Lords of the Admiralty ; prize money to be paid as above stated, and according to ratings.]

That all captains, seamen, and others serving in any of her Majesty's ships of war, or merchant ships imployed in her service shall or may take and have to themselves as pillage, without further or other accompt to be given for the same, all such goods and merchandizes as shall be found by them, or any of them, in any ship they shall take in fight, upon or above the gun deck of the said ship, and not otherwise.

That in case any of her Majesty's ships of war, or merchants' ships imployed in her Majesty's service, or in any private man of war, shall take in fight, or shall sink, fire, or by any other means destroy, any ship of war, or any private man of war belonging to or in the service of the enemy, [she] shall receive and have as a reward for such service, for each piece of ordnance, whether iron or brass, in any ship of war, or any private man

of war so taken or destroyed, ten pounds to be paid out of her Majesty's share of prizes ; which said ten pounds per gun in any ship taken by her Majesty's ships of war shall be shared and divided as is before directed.

That her Majesty having impowered the lord high Admirall of England to grant letters of marque or commissions for privateers to such persons as he shall think fitly qualified in that behalf, according to the treatys between her Majesty and her allys, doth for encouragement of such privateers further declare that all prizes taken at sea, or in any of the enemy's ports, havens, or rivers, by any privateer, and being brought into port, according to her Majesty's instructions in that behalf, shall, unless otherwise decreed by the court of Admiralty, be continued in the possession of the privateer, having only Custom House officers on board, as is usuall in merchants' ships, to secure her Majesty's dutys ; and such ship, vessell, or goods, being condemned and adjudged as lawfull prize, and duly inventoried and appraised by such persons as shall be lawfully authorized in that behalf, the same shall be delivered to the captor thereof, or [to] such persons as are interested therein, to be disposed of by him or them as he or they shall think fit, they first satisfying, paying, or securing to her Majesty such customes and dutys as are payable upon the importation of such goods according to law [*other than certain duties on French wines*], and also paying one tenth part of the value thereof, according to the aforesaid appraisement, to such person or persons as shall be appointed by the lord high Admirall of England to receive the same.

That there shall be also payd out of her

Majesty's share of prizes all such sum or sums of money as the lord high Admirall shall from time to time think fit to direct to be payd to any person or persons for medalls or other rewards for officers, mariners, seamen, or soldiers, or others who shall be found to have done any eminent or extraordinary service.

Lastly, her Majesty is pleased to declare that, in case any captain, officer, seaman, or other person serving in any of her Majesty's ships of war, or merchant ships in her service, or in any privateer, shall plunder, imbezle, purloin, conceal, or convey away any goods, wares, or merchandizes, ship papers, or any part of the tackle, furniture, or apparel of any prize taken, except pillage in prizes taken in fight by any of her Majesty's ships of war or merchants' ¹ ships in her service as aforesaid, or they be any ways aiding or assisting therein, such person or persons so offending shall not have or claim any benefit, share, or advantage, by this her Majesty's most gracious declaration. And in case the captains or officers of any of her Majesty's ships shall be found guilty of such imbezlements, they shall be punished as a court martial shall think fit, either by loss of employment or otherwise according to the 7th Article of an Act of Parliament made in the 13th year of King Charles the Second. And in such case the captain and officers of privateers shall not only lose their share of the prize, but be rendered incapable of having a letter of marque for the time to come.

Given at our court of St. James', the 1st of June 1702, in the first year of our reign.

¹ Merchandize, in original.

1702. Inhibition to the judge of the Cinque Ports Admiralty forbidding him to proceed further in a prize case.—*Adm. Ct. Exemplifications* 63, 27th Aug. 1702.

The original, in the name of Prince George of Denmark, the lord high Admiral, addressed to all Vice Admirals and others, recites that by letters patent the power to hear prize cases had, at the beginning of the war, been granted to Sir Charles Hedges, the judge of the high court of Admiralty, and that he alone had the right to hear them. Notwithstanding this, George Brewer, judge of the Cinque Ports Admiralty, had wrongfully taken upon himself to hear a prize case. It proceeds as follows :

. . . Therefore we enjoin and straitly command you, on behalf as well of our said lady the Queen as of ourselves, that you in no wise fail by reason of any liberty or franchise, to inhibit, or cause to be inhibited peremptorily the said George Brewer, the pretended judge aforesaid, and his surrogate or surrogates, and the registrar or scribe or scribes of the Acts [of the said court], and in particular the marshal and proctors, and generally all and singular others who ought according to the exigency of the law to be inhibited in that behalf, that neither they nor any of them take any further steps or proceedings in the said cause touching the Fortune of Dunkirk, and that they take no steps or proceedings in any [cause touching the] capture, seizure, prize, or reprisal, of any ship or goods whatsoever now or hereafter to be captured or seized as belonging to France or Spain, or to their subjects, or to inhabitants of their territories, as enemies to our said lady the Queen, or in any cause touching

the confiscation or condemnation of any ship or goods liable thereto, or in any cause of reprisal touching any such ship or goods; and that they neither attempt to hear or determine any such cause, nor presume to cause any such attempt to be made, under pain of the law and the penalty due to contempt. . . . [*The rest in common form*].

[*Dated 27th August 1702.*]

Georgius Daniæ Princeps . . . [*after a long recital to the effect stated above the inhibition proceeds*] . . . Vobis igitur, ex parte dictæ dominæ nostræ Reginæ et nostrâ, conjunctim et divisim, committimus ac firmiter injungendo mandamus, stricteque precipimus quatenus non omittatis propter aliquam libertatem vel franchiseiam quin inhibeatis vel inhiberi faciatis peremptorie præfato Johanni Brewer, judici prætenso antedicto, ejusque surrogato vel surrogatis, et registrario sive actorum scribæ seu scribis, et marescallo et procuratoribus in specie, ac omnibus et singulis aliis in genere quibus jus exigit in hâc parte inhiberi, ne ipsi vel eorum aliquis ad ulterius procedendum et cognoscendum in dictâ causâ quoad antedictam navem the Fortune de Dunquercâ, vel ad procedendum et cognoscendum in aliquibus capturis, seizuris, prædis, vel repressaliis quorumcunque navium vel bonorum captorum aut seizitorum, seu in posterum capiendorum vel seizandorum¹ tanquam ad Galliam et Hispaniam, eorumve subditos aut incolas infra territoria sua, (hostes dictæ dominæ nostræ Reginæ), spectantium, vel quorumcunque navium et bonorum confiscationi vel condemnationi obnoxiorum et subjectorum, vel in aliquibus causis repressaliarum eadem naves et bona tangentibus, vel ad easdem causas audiendas et terminandas attemptent vel attemptari faciant aut presumant, sub poena juris et contemptus . . . [*in common form; dated 27th August, 1702*].

¹ Sic.

1702. Warrant from the Lord Admiral to the prize commissioners to restore a ship recaptured from the enemy, on payment of salvage.—*Adm. Ct. Exemplifications* 63, 7th Oct. 1702.

George, Prince of Denmark, . . . to our well beloved prize commissioners . . . [*in common form*] . . . Greeting. Whereas by lawful proofs made in the high court of Admiralty it has been shewn and appears that a certain ship called the Betty, whereof Peter Bonnean is master, and her apparel . . .¹ and all the goods . . . in her, which had been captured by a French privateer, and afterwards recaptured by a ship of the Queen's fleet called the Dragon, whereof Robert Holliman is captain, and brought to the harbour of Portsmouth, did at the time of their capture and recapture properly and lawfully belong to Stephen Creagh, Michael Follett, and Daniel Hayes, subjects of our said lady the Queen ; And that thereupon our well beloved George Bramston, doctor of laws, surrogate of the right honourable Sir Charles Hedges . . . duly and lawfully proceeding, decreed that the said ship the Betty, and her apparel . . . and the goods recaptured in her . . . should be discharged from the arrest put upon them in this behalf, and that they should be delivered and restored to Thomas Prevost and Lewis Martin, or one of them, for the use of the said owners ; but at the same time, pronouncing that there was just cause for seizure, he condemned the owners to pay salvage for the recapture,

¹ Superfluous words are omitted throughout.

together with lawful expenses, and assessed the salvage at one eighth of the true value of the ship and her apparel and the goods . . . that were in her, according to appraisement made as justice requires ; And whereas a commission for appraisement of the ship and her apparel and the goods . . . that were in her issued under the great seal of the court, and was returned into its Registry with the appraisement annexed, which amounted to the sum of £222 os. 10d. . . . and on the day of the date of these presents the sum of £27 15s. 1d. . . . was paid into the hands of our well beloved Richard Crawley, . . . our receiver, in respect of such salvage, Therefore we, by virtue of these presents, [and] on behalf of our said lady the Queen and [also] of ourselves, give and grant to you or any three of you power, and we command that you fail not, to release from the arrest laid upon them in this behalf the said ship the Betty and her apparel and the goods . . . that were in her, and after payment of the charges that are rightly due to deliver and restore the same, or cause them to be delivered and restored to the said Lewis Martin and Thomas Prevost, or to one of them, for the use of their owners, and in no wise to fail herein. Dated at London, in the aforesaid court, under the great seal thereof, 7th Oct. 1702.

Georgius, Daniæ Princeps . . . ¹ dilectis nobis commissariis principalibus . . . Reginæ pro navibus et bonis jure repressaliarum vel belli captis, Salutem. Cum per probationes legitimas in suprema curia . . . Admirallitatis . . . factas constat et apparet navem quandam vocatam the Betty, (cujus Petrus Bonnean est magister), ejusque apparatus . . . omniaque bona . . . in eâdem,

¹ Superfluous words are omitted.

per navem quandam privatam bellicam Gallicam capta, posteaque per navem quandam e classe regiâ vocatam the Dragon, (cujus Robertus Holliman est capitaneus), recapta, et in portum Portsmuthæ adducta, ad Stephanum Creagh, Michaellem Follett, et Danielelem Hayes, dictæ dominæ nostræ Reginae subditos, tempore capturæ et recuperationis eorundem proprie et legitime pertinuisse et in præsentî spectare; Ac desuper dilectus noster Georgius Bramston, legum doctor, surrogatus præhonorandi viri domini Caroli Hedges . . . rite et legitime procedens, antedictam navem the Betty, ejusque apparatus . . . et . . . bona . . . in eâdem recapta a seizurâ in hâc parte factâ relaxanda, et Ludovico Martin et Thomæ Prevost vel eorum uni in usum dictorum proprietariorum eorundem tradenda et restituenda fore decrevit, justam vero fuisse causam seizuræ eorundem pronunciaverit, ideoque partes prædictas in salvagio pro recuperatione eorundem, et in expensis de jure debitis condemnaverit, idemque salvagium ad unam octavam partem veri valoris dictæ navis, ejusque apparatus . . . et omnium bonorum in eâdem juxta appretiationem eorundem autoritate curiæ prædictæ capiandem taxaverit, justitiâ id poscente; Cumque commissio pro appretiatione dictæ navis, ejusque apparatus . . . et bonorum . . . alias sub magno sigillo dictæ curiæ emanata in Registrarium ejusdem curiæ introducta sit, unacum appretiatione eorundem eidem annexa, in toto extendente ad summam ducentarum viginti duarum librarum et decem denariorum . . . ac die dati præsentium summa viginti et septem librarum quindecim solidorum et unius denarii . . . in manus dilecti nostri Richardi Crawley . . . receptoris nostri in hâc parte pro salvagio prædicto soluta sit; Vobis igitur, seu aliquibus tribus vestrum, ex parte . . . Reginae et nostrâ, harum serie, potestatem concedimus et elargimur, ac mandamus, quatenus non omittatis quin antedictam navem the Betty, ejusque apparatus . . . et . . . bona . . . in eâdem recapta a seizurâ in hâc parte factâ relaxetis, et præfatis Ludovico Martin et Thomæ Prevost, vel eorum uni, in usum prædictum tradatis vel resti-

tuatis, seu sic tradenda et restituenda fore curetis, solutis prius expensis de jure debitis, et hoc nullatenus omittatis. Datum Londini in curiâ prædictâ sub sigillo ejusdem magno . . . [*in common form, dated 7th Oct. 1702*].

1703. The Lords to Nottingham, as to two ships suspected of designs against the Spaniards in the East; security taken for their good behaviour.—*S.P. Dom. Naval* 7, 3 April.

We have, in obedience to her Majestie's commands signified to us by your late letter, considered of the representation made in the name of the Old East India Company concerning Captain Dampier in the ship *St George*, Captain Pullerine in the ship *Fame*, and some others now fitting out to sea, in order, as 'tis pretended, to cruise on the Spaniards in the West¹ Indies; And wee did thereupon send for the gentlemen concerned in the aforesaid expedition, and represented to them the apprehensions the Company were under, that something will be acted by the said ships which may be prejudiciall to their affairs in India; and therefore recommended them to give such security to Dr. Bramston, surrogate to the judge of the high court of Admiralty, for the good behaviour of the officers and men in the sayd ships as might, if possible, satisfy the gentlemen of the East India Company. And Dr. Bramston, having reported to us what security² they have so given, wee send you a

¹ *Sic*; qy. mistake for East Indies.

² Security was given in £3000 for each of the two ships named.

copy of the sayd report, desiring your Lordship will lay the same before her Majesty, for her further pleasure thereupon, the ships being, according to her Majesty's commands, stopt in the Downes till further order.

[Dated 3rd April 1703, and signed D. Mitchell, Geo. Churchill, Richd. Hill, J. Bridges.

1704. Newton¹ to the Lords, explaining why the judge had not condemned a ship for trading with the enemy, and why he did not advise an appeal.—
Adm. Sec. In Letters 3667, f. 14.

The Catherine, Captain Devenish commander, haveing likewise a commission for a privateer, went laden from the port of London, since the warr, on a voyage, as pretended, for the Maderas, but went directly for Teneriffe, and there took in a lading of Canary wines; and upon her returne, was, with her lading, seized in port on behalf of the Lord High Admiral, as the goods of enemies.

When the case came to be heard in the court of Admiralty, it did appear to the judge, by the depositions taken in the cause, that the merchants, who claimed the cargoe, had goods and effects in the Canaries before the war broke out, which effects were not carried off, but remained there; That, without sending some lading thither, it was impossible to bring off any lading on their effects from thence; that the government was so sensible that the merchants had effects there,

¹ Dr. Henry Newton, Advocate for the Admiralty, afterwards judge.

and that there was a necessity of sending some goods thither, in order for the merchants to secure the bringing home their estates, that the Queen lately permitted two ships to be laden with pipe staves and to goe to the Canaries on that accompt. It was likewise mentioned on behalf of the merchants that letters of mart were taken out, for the better securing their men from being pressed.

Which argument so prevailed upon the judge of the Admiralty, that after a full hearing and long debate by the advocates on both sides, hee gave a sentence for the claymers ; from whence the Lord Admirall's proctor, as of course, entered an appeale to the Lords Commissioners for appeales.

And I doe conceive that, had this been the first instance of a cause of this nature, it might have been adviseable to have prosecuted an appeale before the Lords of the Councill ; for that it is a trade with enemyes, with whom, according to the common notions of warr, no commerce is to be had. And if the merchants had effects there, yet might the goeing thither and tradeing with enemyes be apprehended and construed to be unlawfull, it being done without the knowledge and permission of the government first had and obtained. But that I find that there was lately depending a cause of the same nature before the Lords, in the case of the ship the Dorothy, where some of the same merchants were concerned, the same way of tradeing was used, and that to the same place, the cargoe of a like nature, and that of considerable value ; which was solemnly heard and argued, both as to fact and law, by the advocates for his Royall Highnesse the Prince and the claymers ; where

the Lords, upon proof of that point, that the merchants had effects there, and the other matters mentioned in this case, which were made use of in the other, (the onely difference betwixt the two being that the Catherine had letters of mart, which the Dorothy had not), ordered the lading to be restored to the claymers, onely pronouncing just cause for seizure, and condemning the merchants in costs.

For which reasons I humbly conceive that it may not be adviseable to prosecute the appeale ; since the causes are of a like nature, and the judicature the same ; wherefore it is reasonable to believe that the same sentence may be expected to be given in this cause, which was passed in the other.

1704. Instructions to the fleet as to prize.

Adm. Sec. In Letters 5249, f. 422.

I do hereby require and direct the captains of her Majesty's ships of war to put my following instructions carefully in execution, to prevent all undue intercourse with the enemy, or their being furnished with navall stores :

1. That the ships belonging to any prince or state in war with France or Spain, or belonging to Altona, Gluckstadt, Hamburgh, Lubeck, Staden, and other citys and places of the Empire, as well on the East Sea as on the rivers of the Elbe, Weser, Ems, and Oder, although belonging to the king of Sweden, Denmarke, or other places or states as members of the Empire, and subject to the Avocatories of the Empire, which shall be bound to or coming from France or Spain, or any of their countrys, territorys, or dominions, may be taken as prize.

2. That all ships of any other nation that are bound to France or Spain, or to any of their countrys, territorys, or dominions, from any place in war with France or Spain, or subject to the Avocatories of the Empire, or shall come from France or Spain, bound to any such place, shall be taken as prize, unless they be only in ballast.

3. That all ships carrying any contraband goods to France or Spain shall be seized also.

4. That all sorts of fireworks and things thereto belonging, as canon, musquets, mortars, petards, bombs, granadoes, saucisses, peckransen(?), carriages, rests, bandaliers, powder, match, salt-petre, bullets, picques, swords, head pieces, cuirasses, halberts, horses, saddles, holsters, belts, sailwork, rigging, cables, cordage, masts, lead, pitch, tar, hemp, together with all other equipage that serves for sea or land, laden in Danish ships and bound to the enemy's country, are accounted contraband goods.

5. That the same goods or merchandizes laden in ships belonging to neutral places bound to the enemy's country are to be reputed as contraband.

6. That Danish ships being furnished with the necessary passports, together with the authentick certificates relating to the oaths required by the convention with Denmarke, the forms of which passport and oaths are hereunto annexed, and there being no suspition of their having navall stores on board, may pass freely, except such ships as have not disposed of their whole lading in the first port of France where they touched, but together with the remainder of their lading have taken in other goods in that first port of France, and are pro-

ceeding towards another place within the territory of the French king with the same, and also except in the cases before mentioned.

7. That the ships belonging to the subjects of Sweden shall be visited and brought up, in case they are not furnished with passports and certificates wherein the forms prescribed by the 12th Article of the treaty hereunto annexed between England and Sweden, concluded in the year 1661 are word for word observed, or in case there be just cause of suspicion.

[*Approved by the King in Council.*]

1705. Report of the Lord Admiral upon a petition by a Captain to be reinstated, after having been dismissed from the service for misbehaviour in connexion with goods from a Dutch prize.¹—*S.P. Dom. Naval* 7, 14th March.

Her Majesty having pleased to referr unto me the petition of Captain Thomas Ekins, wherein he sets forth that he was lately captaine of Her Majestie's ship Woolwich, and did seize a Dutch interloper for tradeing with the French and English at Guinea, in breach of the declaration of warr and the Act of Navigation; but that by the representation of the Dutch agents he was dismissed and confined for the same; and that the words of his commitment run: 'for seizing a Dutch ship at Plymouth, and taking out gold and other things, and sending the same to Exeter and other places'; but that, as to the

¹ There was a second petition, and a second reference; Prince George adhered to the opinion expressed here.

first part of the charge, the high court of Admiralty hath decreed that he had just cause of seizure ; and upon his bringing a habeas corpus in the court of Queen's Bench upon the latter part of the commitment, he was honourably acquitted there, for that it appeared that he had done nothing but his duty therein, and what he had a right to do by the known laws of the land ; for which reasons he humbly prays that he may be restored to his post in Her Majestie's service, with some regard to what he has suffered in his reputation and fortune.

I have in obedience to Her Majestie's command, considered of the case of the petitioner and do humbly report that he, being captain of the Woolwich, and bound to Newfoundland, put into the port of Plymouth ; and meeting there a Dutch merchant shipp, which came from Guinea, he did on suspicion seize the said ship, and give an account thereof to my office.

But it being soon after represented that, contrary to his instructions, Her Majestie's declaration, and the known rules and practice of the sea, he did, instead of securing the hatches of the said shipp, and delivering her with her cargo entire into the possession of those officers who ought to have taken the charge of her, seize on a very considerable quantity of gold dust and other things ; the which he conveyed away, some to Exeter, other parts into his own scrittoire, and the remainder to a merchant at Plymouth. Orders were thereupon sent to displace him from his command, and to take him into custody at that port ; from whence he was brought to towne.

That, as to the seizeing the shipp, it is presumed that he might justly have done the same,

upon receiving such information as had given him good reason to suspect her haveing traded with Her Majestie's enemys ; but as it is before mentioned his proceedings were very unjustifiable in takeing out of her any part of the loading. And although, (as he alleges), he has been tryed and acquitted at the Queen's Bench for the same, (the which was probably upon the score of the restitution which was made of the goods, when they were found out, and he thereupon obliged to return them), yett since he had no greater a regard to his duty, the direct letter of his instructions, and the known rules and methods of the Navy, I cannot advise the employing him againe therein ; but humbly submit his case and circumstances to Her Majestie.

Admiralty Office, March 14th 170 $\frac{1}{2}$. GEORGE.

By command of His Royal Highness.

J. Burchett.

1705. Order of the Queen to restore a Dutch ship which had been brought in for trading with the enemy, Holland having agreed to do the same by English ships.
—*S.P. Foreign, Foreign Ministers, &c*,
22, 7th April 1705.

ANNE R.

Whereas, for maintaining the good understanding that is between us and our allies the States General of the United Provinces, we have mutually agreed that there be no seizure or confiscation made of any shipps of either nation trading to France or Spain or their dominions,

notwithstanding of the present warr, such shippes having passes for that end from their respective sovereigns; And have also agreed that such shippes as are already taken on either side should be restored; And understanding that there was brought into our kingdom by Captain Thomas Gordon the ship, the Catherine of Rotterdam, Captain . . . commander, and condemned as lawfull prize in our court of Admiralty there, and which ship had the States, their pass; We therefore authorise and require you to cause return to the said captain . . . and his owners the value of the said ship Catherine and her cargo. And you are to make known to our subjects of that our kingdom that all such as have suffered by such confiscations there, that they [*sic*] are to have the like favour of our said allies, the States, and shall have our royal protection and assistance in their claims of repetition from them. And so we bid you heartily farewell. Given at our court at St James' the 7th day of April 1705, and of our reign the 11th year.¹

By Her Majesties' command,

(Signed) AL. WEDDERBURN.

¹ Difficulties appear to have arisen in connexion with this order, and on 11th Dec. 1708 Sir Charles Hedges reports to the Queen that it was in dispute whether sentence had or had not been given in due form by the Scottish Admiralty Court and confirmed on appeal to the Court of Session; and that the parties must be heard upon the point. 'I think there is a necessity for reviewing the whole matter before your Majestie's most honourable Privy Councill . . . for that is the proper remedy prescribed by the treaties . . . as will appear by the 16th Article of the treaty of commerce with Holland, anno 1668.'

1707. Opinion as to the legality of a seizure purporting to have been made under the Navigation Act,¹ which does not apply to Scotland.—*Adm. Sec. In Letters 3667, f. 78.*

A commander of one of her Majesty's men of war in his way to Leith in Scotland, mett with a dogger of Rotterdam, laden with wine, brandy, and salt, and bound from thence to Leith, as appears by the bills of lading. Whereupon the commander of the man of war seized and detained her as prize.

Query : Whether, (as the case is), this vessel is seizable by law, and ought to be detained, or not ?

I am of opinion this dogger of Rotterdam ought not to have been seised, nor is prize, unless it be such by the lawes of Scotland ; nor indeed could it be seised, if bound to England, before the ship came into an English port ; for notwithstanding the bills of ladeing, the vessell might change its voyage before she imported her cargo into England, by which only forfeiture would arise here by the Act of Navigation, which doth not yet extend to Scotland.

ED. NORTHEY,²
March 20th, 1708.

1707. Hedges to Burchett ; friends' goods in enemy ships ; Genoese claim.—*Adm. Sec. In Letters 3667, f. 74.*

I have received yours of the 23 past, with an extract of a letter from Sir Clo. Shovel, wherein he writes it has been a common cheat for the Genoese to saile in French and Spanish ships, and when they are taken they repaire to England, and

¹ 12 Charles II, c. 18.

² Attorney-General.

appeal ; but hopes they will meet with no encouragement. To which I have only to answer that if the case shall appear to be as is represented in the said extract, it can never receive any encouragement here. For it is a settled rule in law that the effects of neuters, friends, or subjects, taken on board the ships of enemies, are good prize, and there is no instance to the contrary in the late or present warr. But if the ship taken by the Newarke belongs to any neuters, they have a right by the laws of nations to be heard upon making out their claimes. The best and most effectual means that I can think of to prevent abuses in cases of this nature is, for the captains, who take prizes, to transmit to the court of Admiralty all papers taken in such ships, together with the examinations of witnesses relateing to such prizes, as the instructions to commanders of ships of warr direct ; by which it may appear whether such claimers resorting to the court of Admiralty are to be heard or not, when their ships are taken. For if no papers or examinations are transmitted, whereby the court may be informed, her Majesties' subjects, or those of her allies, or such as are in amity, may with justice insist upon being heard, and the court cannot legally refuse them. Besides it is for her Majestie's service that the instructions for transmitting papers and proofs be duely complied with, that her Majestie's and the lord Admiral's shares and interest in all prizes may be known and accounted for. Which I desire you will lay before his Royal Highness with the inclosed report.¹

[Dated 11th Feb. 1706.]

¹ This is missing. As to the neglect to bring in ship papers see *ibid.* ff. 72, 112.

1707. Prince George of Denmark surrenders to the crown all the profits of his office of lord high Admiral in excess of £2500 yearly.—*Adm. Sec. Out Letters* 1049, f. 369.¹

Whereas her most excellent Majestie, Queen Anne, hath been pleased by her letters patents under the great seale of Great Brittain, bearing date at Westminster the twenty eighth day of June, in the sixth year of her reign, to grant mee, Prince George of Denmark, her husband, the office of Lord High Admirall of Great Brittain, Ireland, Wales, and the dominions and islands thereof, and of her dominions of New England, New York, East and West Jersey, Jamaica, Virginia, Barbadoes, St. Christophers, Nevis, Montserrat, Bermudas, and Antegoa in America, and of Guinea, Binney, and Angola in Africa, and of the islands and dominions thereof, and of all and singular other the plantations, dominions, and territories whatsoever in parts beyond the sea in the possession of her Majesty, or any of her sayd Majestie's subjects; And hath by the sayd letters patents also constituted mee Generall of the fleetes and forces by sea of her Majestie's kingdoms of Great Brittain and Ireland, and of all places, dominions, and islands aforesaid, to be held, exercised, and enjoyed by mee or any deputy or deputies dureing her Majestie's pleasure. And whereas all wrecks of the sea, goods, and ships, taken from pyrates, and divers tenths and other rights, duties, and perquisites, are therein

¹ A similar surrender was made by the Earl of Pembroke and Montgomery, the succeeding Lord High Admiral, on 3rd Dec. 1708; *Adm. Sec. Out Letters* 1050, f. 33.

by express words granted or doe otherwise belong to mee, as dutys appertaineing to the said office or place of High Admirall and Generall aforesaide. And whereas it was her Majestie's royall will, meaning, and intention, at the time of her granting the said letters patents, that all profitts, perquisites, and advantages whatsoever accruing, happening, or ariseing by or by reason of the grante of the said office to mee granted as aforesaide, (except the summe of two thousand five hundred pounds per annum, which is to bee disposed of to or for such particular use or uses as her Majesty under her sign manuell shall direct), should dureing the time of the present warr with France and Spain be applyed, payed, and disposed of to and for the benefitt and use of the publick, as her Majesty shall from time to time direct, that by meanes thereof her saide Majesty's loveing subjects may bee eased; Bee it therefore known that I the said Prince George, in pursuance of and according to her said Majesty's royall, gracious, and pious intentions, and in discharge of the great trust shee hath been pleased to repose in mee, doe hereby promise, declare, and agree to and with her most excellent Majesty, that all and every the perquisites, profitts, fines, forfeitures, mulcts, wrecks, advantages, emoluments, goods, chattels, and other profitts, of what nature and kind soever, belonging to or accruing or ariseing by reason of the grant of the said office of High Admirall, shall and may bee applyed, payed, and disposed of to and for the use and benefitt of the publick from time to time dureing the whole continuance of the said warr, in such manner as her said Majesty shall from time to time by any writing or writings under her royall signe manuell or sealed by her privy signett

direct or appoint, other than and except so much of the said fees, perquisites, and profitts, as shall be of the annal value of, or amount to the sum of two thousand five hundred pounds per annum, which shall be annually disposed of to or for such other use or uses as her Majesty, under her signe manuell, shall direct. And to the intent that the above mentioned profitts and perquisites may be so applyed, I will from time to time during the time of the said warr cause exact accounts in writing to be kept of the same, and to be layd before her Majesty, when shee shall require the same. In witness . . . [*in common form; dated 7th July, 1707*].

1709. Pembroke to Hedges, as to a capture by non-commissioned captors, and punishing embezzlement.—*Adm. Sec. Out Letters* 1050, f. 21.¹

Whereas you have reported unto me your opinion upon some part of a letter from the governour of Jamaica, which by my order was lately sent to you, that as to the brigantine which was taken in those parts without commission, it is necessary forthwith to proceed to her condemnation here as a perquisite of the Admiralty, and by the first opportunity to send a writ from the court of Admiralty to arrest the said brigantine and loading, or the proceed thereof; I doe therefore hereby direct and require you so to do. And you having also reported to me your opinion that as to the growing mischief

¹ Thomas Earl of Pembroke and Montgomery, appointed Lord High Admiral for the second time, 29th Nov. 1708.

of sinking, imbezzling, and taking hostages for prizes by privateers, who have commissions, if information can be given upon oath against such offenders, they may be severely punished, upon the breach of their Instructions, in case they had commissions from the Lord High Admirall; but that if they had no such commissions, they may be proceeded against as pyrates; I have thereupon given orders that the governour of Jamaica be writ to, to inform himself of this matter, and to transmit to me an account thereof, with the names of the commanders who have been guilty of either fact, and the name, burthen, and force of their respective vessells. Given under my hand this 4th of Feb. 1708.

PEMBROKE.

1709. Order in Council, that all ships with corn on board for the enemy be brought in.—*P.C. Register* 82, f. 308.

Her Majesty was this day pleased to order that the right honourable the Lord High Admiral of Great Britain do forthwith cause an additionall Instruction¹ to be sent to the commanders of her Majesty's ships of war and privateers for stopping all neutral ships and vessells whatsoever that shall be laden with corne and bound to France, or the enemy's country, and to bring them into some of her Majesty's ports untill her Majesty's pleasure be further known therein.

[*Dated 28th April 1709.*]

¹ This has not been found.

1709. Draft order to the Lord Admiral directing him to stop corn in neutral ships bound to the enemy's ports.—*S.P. Dom. Naval* 8, . . . April.

The Queen, being informed that there is great scarcity of corn at present in France, and that thereupon the enemy is endeavouring to procure great quantities to be brought thither from foreign parts ; And Her Majesty, judging it to be of the highest importance to her affairs, as well as those of all her allies, to distress the enemy as much as possible by taking the most effectual methods for preventing their receiving such supplies at this juncture ; Her Majesty has thereupon commanded me to signify her pleasure to your Lordship that you give the necessary orders to the commanders of Her Majesty's ships of warr, and likewise cause instructions to be given to privateers and others who have commissions or letters of marque, to bring up into the next safe port all ships and vessels as they shall meet with belonging to neutral Princes and States, laden with corn for the enemy's country, and that upon their bringing up such ships they do immediately give account of the same, that Her Majesty may give such further directions concerning the same as she shall think fit.¹

¹ Accompanying this is a draft letter to the Lord Treasurer, which, after reciting the above, concludes—"it being Her Majesty's intention that such cargoes of corn so brought up should be detained and paid for here, I am thereupon directed to signify the same to your Lordship . . . that your Lordship should give such orders concerning the same as shall be most proper." This and also the order in the text are unsigned. The order of 1694 on the same subject (*supra*, p. 160) accompanies them.

1709. Pembroke to Hedges; the above Order to be made an Instruction to privateers. Further Order in Council on the same subject.—*Adm. Sec. Out Letters* 1050, f. 37.

Whereas her Majesty hath been pleased by her order in Council dated the 28th of this present month of Aprill¹ to direct that the captains of her ships and vessells of warr and privateers shall be forthwith ordered to stop all neutrall ships and vessells whatsoever that shall be loaden with corn to France or the enemy's country, and to bring them into some of her Majesty's ports, untill her Majesty's further pleasure be known therein; You are therefore hereby required and directed to cause her Majesty's said order in Council to be given as an additional instruction to all captains of ships or vessells which shall for the future have letters of marque or commissions for private men of war. For which this shall be your warrant. Given under my hand this 30th Aprill 1709.

A further Order in Council issued on 19th May 1709.—*S.P. Dom. Naval* 139.

Whereas the enemy are in great distress for want of corn, and do use all possible means to get themselves supplied from her Majesty's dominions, and that there is reason to believe that they have received corn by way of Spain; To prevent therefore a practice that so visibly tends to the support of the enemy, more especially at this time, and to the prejudice of the whole alliance, her Majesty is pleased in Council to declare that all sorts of corn that shall be bound

¹ *P.C. Register* 82, f. 308; *supra*, p. 210.

in any ships whatsoever to the enemy's country is and shall be deemed contraband, and does hereby strictly prohibit all her loving subjects from exporting the same to any ports or places whatsoever within the dominions of her Majesty's declared enemies.

1709. As to the proper tribunal for the trial of captures made by English ships.—
*Adm. Sec. In Letters 3667, f. 197.*¹

Which day [3rd Aug. 1709] Mr. Exton, proctor for the right honourable Thomas Earl of Pembroke and Montgomery, lord high Admiral of Great Britain, Ireland &c, alleaged that it has been represented to the said lord high Admiral by her Majesty's consul residing at the port of Naples that the government there do take cognizance of and determine concerning ships and goods taken and brought into the said port by British privateers, and complaining thereof as a great incroachment upon the jurisdiction of her Majestie's high court of Admiralty of England, where only such captures are cognizable, desired some proper method may be taken to prevent the like practices for the future. And the said Mr. Exton did further alleage that such proceedings are contrary to the laws of nations, it being a known and established rule among all trading nations that all privateers are bound by their commissions and instructions to bring

¹ This appears to have been sent by Hedges' order to the English consul at Naples. In the volume from which it is taken are several letters from the consul upon the matter. The passage in the text is a contemporary translation of the Latin entry in the Act Book of the High Court of Admiralty.

to judgment every prize they take, to be adjudged in the respective Admiralties from whence they have their commissions, and that all prizes taken by Brittish privateers in the Mediterranean are to be tryed and determined in the high court of Admiralty of England, and no where else; and prayed the judgment of this court thereof.

Whereupon the judge, having duly considered the whole matter, did pronounce and declare that all captains of British privateers are bound, both by their instructions passed by her Majesty in Council, and by their commissions or letters of marque granted to them by the lord high Admiral of Great Britain, to bring all prizes by them taken in the Mediterranean or elsewhere to judgment in the high court of Admiralty, as her Majesty shall authorize in that behalfe, to be there condemned or restored as the case shall require; and that by the laws of nations no prince or state whatsoever ought to take cognizance of any prizes taken by British privateers, but that the same ought to be tryed and determined in the high court of Admiralty of England, from whence they have their commissions; and that this is agreeable to the practice of other trading nations.

1710. Passport for a French Bank fisherman; licence to arm against enemies and pirates.—*Adm. Ct. Prize Papers* 91.

Louis Alexandre de Bourbon, Comte de Toulouse, Duc d'Amville, Commandeur des Ordres du Roy, Gouverneur et Lieutenant General pour le Roy en sa Province de Bretagne, Pair et Amiral de France, à tous ceux qui ces présentes Lettres verront, Salut. Sçavoir faisons, Que nous avons donné Congé et Passport à Pierre Tessier,

capitaine, maistre conducteur de navire nommé L'Arc en Ciel de Nantes, du port de soixante dix tonneaux, ou environ, estant à present à Paimbeuf, de bien et duement équiper et munitionner son navire, et iceluy armer contre toutes incursions des Ennemis de l'Etat, des Pirates, et gens sans aveu, pour le¹ mener et conduire au Banc de Terre Neuve . . . [*The passport goes on to licence the ship to load salt and to fish for cod; forbids trade for furs in New France; enjoins observation of regulations, registration of the ship's crew and armament, keeping of journal, bringing home of crew, and concludes with a request to all princes and states to give free passage and succour. Dated 17th July, 1710.*]

A passport or licence for La Victoire to trade to the West Indies, contained in the same bundle, has the following clause as to armament :

. . . de faire équiper en guerre et marchandise, ledit vaisseau armer et munitionner de toutes choses necessaires, et le charger de telles marchandises que bon luy semblera pourvu qu'elles ne soient ni prohibitées ni defendues, pour aller trafiquer aux Isles d'Amerique, et en ce faisant faire la guerre aux ennemis de l'Etat, à tous corsaires, pirates, gens sans aveu, et autres qui voudront empecher la liberté du commerce aux sujets du Roy, les attaquer en quelques lieux et endroits qu'il les pourra rencontrer, les prendre et amener prisonniers, avec leurs vaisseaux, équipages, et marchandises, et exercer sur eux toutes les voyes et actes permis et usitez par les loix de la guerre.

1710. Hedges to the Lords; the captor having a statutory right to his prize, it is not advisable for the crown to intervene, at the instance of a foreign envoy, in the prize proceedings.—*Adm. Sec. In Letters 3665, f. 267.*

In my letter to Mr. Burchett of the 19 I desired him to acquaint your Lordships that several

¹ les, in original.

cases of the Swedish ships mentioned in the letters of the envoy of Sweden are judicially depending ; and now, in obedience to your Lordships' commands, I here lay before you the reasons of that opinion.

The late Act for convoys and cruizers,¹ which gives the whole prize to the captors after condemnation, entitles them to a prosecution for it ; and I humbly conceive that it is not advisable for the crown to interpose, so as to discharge proceedings at the instance of a foreign minister, though his representations may seem just and reasonable ; nor do I know any law or treaty that requires it. The Sweedes who claimed the ships, and the Dutch and English merchants, who claim the greatest part of their ladings, have judicially given in their claims ; and at their own desire, on the 3 of this month were allowed by the court of Admiralty to the 14 of September for specifying and perfecting their claims ; during which time, according to the course of proceedings, nothing can be determined as to the justice of the seizures, or the right of the claimers, unless the captors desist, or consent to a discharge. In case there has been any torture or barbarous usage of the Sweedes, it ought to be made out by legal proofs, and the captors, who are accused, have a right to be heard in their defence, before any censure can be passed upon them. And if the envoy object on that head, the court of Admiralty had power to do justice to the Sweedes, and would have done it with all possible expedition, and with as great regard to them as to her Majesty's own subjects. If the envoy desires, the officers may be punished for barbarous usage

¹ 6 Anne, c. 28 (Ruff.).

or torture ; they may be also properly tried at court martiall ; but whether the ships are good prize or not, since the captors insist, I conceive will be determined by the court of Admiralty ; and every step made in this case tending to the obstructing the captors from bringing these ships to a triall at law adds to the delay, damage, and expence, which the envoy so much apprehends. And although there has been an unaccountable delay in the captors not transmitting the examinations and ships' papers till the 3 of this month, yet from that time hitherto and, I believe, to the 14 of the next month, all delays, damages, and charges may be imputed to the claimers, who by their own motions have, as it were, tyed up the hands of the court from proceeding.

[Dated 28th Aug. 1710.]

1711. Hedges to Burchett (?), as to the legality of protecting at sea the ship of one belligerent against attack by the other.—*S.P. Dom. Naval* 10, f. 94.

I desire you to acquaint my Lords Commissioners of the Admiralty that I have perused the petitions of Thomas Carey and company and Peter Anderson, a Swedish merchant, which I here return you. As to the first, I am of opinion directions may be given to the commanders of Her Majestie's ships of warr cruizing in proper stations, to guard and defend the ship Christiana, Borge Hansen master, whenever they should overtake or meet her in her voyage, and as long as they should hold courses together ; and also to bring her to such port in England as shee shall

be bound, with the goods and merchandizes of Her Majesties' subjects. And I submit to the Lords' consideration, whether the appointment of a particular convoy to seek out and defend Sweedish ships from Danish ships of warr, in the words of the petition, be not such a matter of State as may properly require Her Majestie's direction. As to Peter Anderson's case, I humbly conceive it may be proper to have an affidavit made of the fact that a Danish privateer does lye by the Sweedish ship Mary of Kingsback in the Downes, and that the petitioner has just and reasonable grounds to apprehend it is with designe to make prize of him, so soon as they are out of Her Majestie's protection; as also that the said ship Mary is outward bound with Her Majestie's pass, as in the petition is set forth. Upon which [I] think an order may be legally sent to detain such Danish privateer in the Downes two tides, or twenty-four hours, till the Sweed is in probability out of danger of being pursued. For it is not permitted by the sea laws to ships of warr to await [*sic*] the harbours, roads, or ports, to the prejudice or obstruction of traders out and home; but in such cases it is usual to detain ships of warr justly suspected of a designe to violate the priviledges of ports and harbours, and not permitt them to begin a pursuite or chase in those places.¹

[Dated 13th July 1711.]

¹ On 26th July, having received this opinion, the Lords write: 'We doe therefore most humbly submitt the same to the Queen, having no objection to giving such orders as are desired to the captains of Her Majestie's ships, in case it is Her Majestie's pleasure the same should be done.'

1711. The Lords to St. John,¹ as to protecting by convoy Swedish ships with English goods on board; and as to bringing in their ships, though under convoy, if they have enemy goods on board.—*S.P. Dom. Naval* 10, f. 234-5.

We have received your letter of the 8th instant, by which you signify to us Her Majestie's pleasure wee should lett you know whether the case of the ships, which were lately taken by a Danish squadron from under the British convoy, has been considered, and what our opinion is relating thereunto; as all soe that wee should consider how farr Her Majestie may insist on protecting by her convoys Sweedish ships laden with goods belonging to British subjects. In answer whereunto wee doe acquaint you that when Captain Rowzier attends us, according to the orders wee have sent him, wee will examine into the case of the afore mentioned ships, which were taken under his convoy. But as to that particular and the latter, wee desire you will be referred to the two enclosed letters from Sir Charles Hedges, judge of the high court of Admiralty, to whose consideration wee formerly referred these matters. But wee think it proper to inform you that the ships belonging to the subjects of the kings of Sweeden and Denmarke have often been brought in by Her Majestie's ships, when they have been mett with under convoy of their men of warr; and, some of them, even when they were furnished with such passes as were required, upon informa-

¹ Henry St. John, Secretary of State, afterwards Viscount Bolingbroke.

tion they had wine and other things on board belonging to the enemy, which goods were condemned, and the ships released.

[Dated 12th Oct. 1911.]

1711. Opinions as to the power to punish unruly convoys.—*Adm. Sec. In Letters* 3668, f. 55.

Captain Hennington, of H.M.S. Bristol writes as follows :—

I send here for the information of my lords commissioners of the Admiralty an account of the ill behaviour of Benjamin Crow, master of the Mary of Yarmouth, one of the fleet under my convoy in our outward passage, viz.

On the 3rd of August at eight in the morning I perceived the fleet to be very much scattered. Some were as far ahead of me, and some to windward, as I could well see them upon our deck, I makeing but an easy sail, the better to keep company with the ships that sailed heavy, which at that time were a great way astern; upon which I fired a shott ahead, for those ahead to bring to, but found they took no notice of it, so continued still my saile, and fired another shott, and as I came up with them they brought to. About noon I was come up with the headmost of them, and fired a shott athwart their forefoot, which they observed. I hailed the Mary of Yarmouth, Benjamin Crow master, and bid him bring to, and sent my lieutenant aboard to bring the master to me, with a design to reprimand him for his offence, and to make him pay

my gunner for the shott. And the lieutenant brought me for answer that the master refused to do it, and sent me word he had no business with me, and would not go out of his ship. Upon which I sent my lieutenant again to bring him aboard ; but when he came, he found the master armed with fire armes ; who told him that if he offered to medle with him, [he] would shout him. Upon this I bore down to him with my ship, and called to the master, and asked him the reason of his insolence, and told him I would send my boat for him, and if he resisted the Queen's ship in that manner, would fire into him. He replied to me that, if I did, he would fire into me again, and that if my boat came, and offered to enter a man, he would shout him ; and accordingly he kept of the boate, and would not suffer her to come aboard, and ordered all his men to their quarters. I being unwilling to use any violence, whereby any of them might suffer, left him, with intent to refer it to my Lords Commissioners of the Admiralty.

Thereupon the Lords laid the case before the law officers, and took their opinions.

According to the circumstances of this case, what methods would you advise most proper to be taken for punishing the master by law ? If by the Admiralty Court, whether you conceive a prohibition will lye, the fact appearing to be done upon the high seas ?

Her Majesty, in her great goodness, provides convoy for her subjects, if they will take the benefit thereof ; but I do not know any law that obliges them to put themselves under convoy ; or when they have done so, not to leave the same.

The business of the convoy is to take care of her Majesty's subjects that will be taken care of, but not to force them; and in the Articles of the Navy there are rules how the convoy shall behave themselves, but none touching those that are to be convoyed; and I do not know that leaving the convoy, without combining with an enemy, is an offence punishable by the common law, or by the Admiralty law.

EDW. NORTHEY,
Nov. 24, 1711.

I have perused this case, and Mr. Attorney General's opinion, and do concur with him that this fact cannot amount to any offence of which the common law will take notice. But whether by the marine law this is an offence, I will not take upon me to say; but should it be so, the whole transaction being on the high sea, I encline to think that the courts of Westminster Hall would not grant a prohibition.

ROB. RAYMOND,¹
Nov. 24, 1711.

1711. Ransom Bill.—*Adm. Ct. Prize Papers*, 91.²

Whereas on the seventh day of October, old style, 1711, the ship called the St Nichola of Sable d'Olone, near Rochelle, whereof Jacques Ayreau is commander, together with her cargo containing as follows, viz. nine thousand Bank fish, and forty hogsheads of salt, and four hogsheads of oyl, or thereabouts, was taken prize by

¹ Solicitor-general.

² Original is in print.

the Ambuscade of Bristol, a private man of war, Robert Summers commander, by vertue of a commission bearing date in London the twenty ninth day of March 1711. And whereas the said Robert Summers is willing, at the instance and request of the said Jacque Ayreau, to permit and suffer the said Jacque Ayreau, together with the said ship and cargo, to proceed on his intended voyage to Nants, or any first port in France, upon condition that the aforesaid Jacque Ayreau shall pay or cause to be paid unto the said Robert Summers, or his executors, administrators, or assigns, the full sum of eleven thousand five hundred livres tournois, French money, which makes nine hundred and fifty sterling money of England, at twelve livers the pound, to be paid in London for the Ransom of the above ship and cargo. And it is agreed by and between the said Robert Summers and the said Jacque Ayreau that he the said Jacque Ayreau shall leave some Hostages or Ransomers in the possession of the said Robert Summers, his executors, administrators, or assigns, for and till the true payment of the abovesaid sum so agreed upon for the Ransom of the said ship and cargo, and shall also bind himself, his heirs, executors, administrators, and assigns, for the true payment thereof, and the Redemption of the Hostages, with the allowance of three shillings and four pence per day for the victualling of the said Hostages from the date hereof until the time of their arrival in England and being released &c, to be likewise well and truly paid unto the said Robert Summers or his assigns, with all other charges that may occur untill the time of the Hostages being released. Now these Presents witness that we Jonachim Bruneteau and Andre

Caillaud, at the instance and request of the said Jacques Ayreau are willing and voluntarily oblige ourselves to become Hostages and Ransomers for the said ship and cargo, and to remain so untill the abovesaid sum of eleven thousand livers tournois agreed upon, with the allowance aforesaid, be fully paid and satisfyd. And I Jacques Ayreau do hereby bind myself, my heirs, executors, and assigns, for the true payment of the said sum as above ; And also to redeem the said Hostages by paying the Ransom and Allowance of three shillings and four pence per day, as before agreed on, unto the said Robert Summers, his heirs, executors, or assigns. In Witness whereof we have set our hands and seals this seventh day of October 1911, old stile.

JOACHIM BRUNETEAU.
ANDRE CAILLAUD.

Signed, sealed, and delivered in the presence of us, Testes, Richard Pym, Fran. Gandouet.

Memorandum. I, Jaque Ayreau, do acknowledge and confess that no Barbarous or Uncivil Treatment has been used to me or any of my Men, nor no Imbezlement nor Pilfrage have been actually done to my ship or cargo by the said Robert Summers, his officers or Company, since the aforesaid Agreement ; And that it is agreed between me and the said Robert Summers that I shall be allowed seventy Days to accomplish my Voyage afterward, and no more ; And that I do well and truly understand the Bargain and Agreement as aforesaid.

Je reconnois avoir ransommé ledit navire Le Saint Nicolas pour la somme de vinze mil cinq livres tournois argent et monnois de France.

JACQUES AYREAU.

1712. Hedges to Burchett, as to the power of the commander of a Queen's ship to ransom a capture.—*Adm. Sec. In Letters* 3668, f. 67.

In answer to yours of the 2nd I conceive that in case the French Banker therein mentioned was so leaky, and so much disabled, that she could not well be brought in, she was justifiably ransomed. For although her Majesty's commanders have not an absolute power to admit prizes to a ransom, yet in cases of necessity, or when the bringing in a prize is inconsistent with the service or voyages the captors are upon, it has allways been allowed. But then it is advisable for the commanders to call their officers together, and to act according to their opinion upon the circumstances of the case, and send a particular account thereof to my lords of the Admiralty.

[Dated 7th Jan. 1712.]

1712. Lords of the Admiralty to the Vice Admiral of Somerset and Bristol; as to a ship fitting out for the Czar of Russia.—*Adm. Sec. Out Letters* 1051, f. 148.¹

Mr Secretary St John, having in pursuance of His Majesty's commands transmitted to us

¹ In 1721 the judges advised that there was no power in the crown to stay a ship building for the Czar; and it is added that in 1713 Trevor and Parker were of the same opinion; *Fortescue's Reports*, 388.

an extract of a letter from the Swedish minister complaining that one Count Gallewin, a Muscovite, is fitting out a ship at Bristoll, and has manned her with English mariners, alledging that she is an English ship and bound for the Mediterranean, whereas in truth she is designed for the Czar of Muscovy's use, we send you enclosed a copy of the said letter, and of the list of the officers and men belonging to her; and do hereby require and direct you to make strict enquiry into the fact complained of, and [to] give us an account how you find the same to be. Given under our hands this 5th July 1712.

Signed &c.

To Sir William Windham, Bart.

Vice-Admiral of the county of Somersett and city and county of Bristoll.

1712. Passport for a French ship.—*Adm. Ct. Prize Papers 85.*

ANNE R.

Anne by the grace of God Queen of Great Britain, France, and Ireland, Defender of the Faith, to all our Admirals, Vice Admirals, Captains, Commanders of our ships of warr or privateers, Governors of our forts and castles, Customers, Comptrollers, Searchers, and to all and singular our officers, both civil and military, [and] our ministers and subjects whom it may concern, Greeting. Our will and pleasure is, and We do hereby strictly charge and require you, (as we do likewise pray and desire the officers and ministers of all Princes and States in amity with us), to permit and suffer a French ship called le Vendosme, burthen 400 tons or thereabouts,

navigated with 80 men,¹ whereof Seigneur Louis Jauffret is master, to sail with her lading from the port of La Ciotat² in France to Bonne in Barbary, and to return from thence with her lading to the port of Marseille in France without any lett, hindrance, or molestation whatsoever. This our passeport to remain in force for six months, and no longer. Given at our court at Windsor Castle, the 31 day of July 1712, in the eleventh year of our reign.

1712. Opinions as to the power of the crown to review a prize sentence of the Lords of Appeals.—*S.P. Foreign, Foreign Ministers &c.* 22, 10th Dec.

In 1712 the Dutch envoy applied for the review of a sentence by which the Admiralty judge, and also the Appeal Commissioners, had condemned the cargo of a Swedish ship, the Stadt of Stockholme. The Advocate General, Sir Nathaniel Lloyd, reported against the application. After reciting the Art. 12 of the treaty of 1674, and the similar Articles of the treaties with Denmark and France, he continues :

. . . A review or revision, such as is meant in the civill law, cannot obtaine here, nor is it allowable by the lawe of the realm in causes civil

¹ These and some other words are in French. The Vendosme was captured by H.M.S. Chatham in September 1712, after a suspension of arms had been proclaimed, the passport not being on board, although it had been issued. She was taken to Barcelona and there condemned as prize, but appears to have been restored on appeal. In 1716 a Vendosme (qy. the same ship), in the service of the Pretender was captured and condemned as a rebel prize ; see *Adm. Sec. In Letters* 3669, 11th Aug. 1716, and p. 240 below.

² Cioutat, near Marseilles.

or marine, but only in causes ecclesiasticall, by virtue of the Queen's supremacy as head of the Church. And by the statute of the 8th of Elizabeth, cap. 5, the diverse appeals permitted to be made by order of the civill lawes in causes civill and marine are taken away, and our appeale only allowed to the Queen, to be determined by commissioners or delegates, to be appointed by the Queen, and their sentence to be finall, any law to the contrary notwithstanding.

I most humbly conceive that the caution particularly stipulated in the treaty was that such review should be made by the Councill only, which in other causes mentioned in the statute is usually made by delegates of common and civill law as are appointed of course by the Lord Keeper. But in respect to such foreign treatys, as also in conformity of the said statute, a commission passes under the great seale to delegates appointed, and by which the Privy Councill are made judges in causes of prize.

And I most humbly beg leave to observe that the review insisted upon by the Dutch envoy is a thing impracticable; for could a review be obtained, yet still it must bee to the Councill. Now the Councill were all in commission when the sentence was given, and consequently 'twill be brought before the said commissioners of [or?] judges delegates; whereas in such causes wherein reviews are granted the judges of the review are different from those delegates who heard the appeale.

In further obedience I have examined the Registry of the court of Admiralty as to causes of prize, and cannot find any instances of such reviews, except in one single case of the ship *Hercules* in June and July durement the last warr,

which was proclaimed in May 1689 and lasted till September 1689.

And therefore I most humbly conceive that the Appeale examined before the Lords of the Councell is the review according to the meaning of the treaty, and that the intent of the treaty hath been followed. All which I most humbly submit &c.

Dec. 10, 1712.

NAT. LLOYD.

Shortly afterwards Drs. Henchman, Pinfold, and Paske gave a contrary opinion :

We have considered this case, with the references contained in it, and are of opinion that by the civil law every supream Prince has a power of granting a review in all cases, after the contending parties have passed through all the ordinary established courts of appeals. And this we conceive to be a prerogative which the Prince may exercise upon good reason ; but as the parties have no right to demand such favour, so we know no law by which Her Majesty of Great Britain has divested herself of such prerogative. For we conceive that the statute 8 Eliz. c. 5 does not extend to this case, but restrains appeals only in causes civil and marine, which, we apprehend to be causes determinable in the civil court of the Admiralty, and from thence appealable to the Queen in Chancery, such as causes of damage, seamen's wages, &c ; but it does not lay any restraint in prize causes, which are not in the first instance determinable in the civil court, and upon an appeal are to be heard by a standing commission directed to the Privy Council, who in course receive all such appeals.

By the treaty with Holland 1674, Art. 11, it

is provided that judgments upon prizes taken shall be given according to equity and justice ; and by Art. 12 that, whenever the ambassadors of the Lords, the States General, shall complain of unjust sentences which have been given, His Majesty will cause the same to be reviewed and examined in his Council ; and the States, in like case, stipulate that they will cause a review or examination of the Assembly of the States General. By which, we apprehend the crown of Great Britain and the States General have mutually reserved to themselves the power of granting extraordinary reviews in prize causes, upon the particular application of that State whose subjects are apprehended to be injured ; and this even after the cause has been determined in the usual course of appeals. And of this there was an instance in the last war, in the case of the ship *Hercules*, by which president [*sic*] the commission for review upon the present petition, (if it shall be thought fit to be granted), may be regulated, [so] as to avoid the seeming inconvenience of being heard before the same judges who have once given sentence in it.

Upon the whole we are of opinion that there having been such an application by the States General's embassadour as the treaty requires, Her Majesty is at liberty to grant a commission of review in this case, if in her great wisdom she shall think proper so to do.

HAM. HENCHMAN, CHA. PINFOLD, THO. PASKE.

Doctors Commons, Ap. 20, 1713.

1713. Hedges to Burchett, as to the limits of the British seas.—*Adm. Sec. In Letters* 3668, f. 146.

My Lords of the Admiralty having been pleased to require my opinion, as soon as conveniently may be, how far the Channel and North Seas are commonly known or reputed to extend, I lay my thoughts before them without delay, with all I can recollect concerning the whole extent of the British seas, as briefly as the matter will admit.

1. I take it, without any doubt, that the four seas, viz. East, South, West, and North are within her Majesty's sea dominions, as queen of Great Britain.

2. That the East and South parts of this dominion extend to the opposite shores; and, if a line be drawn from Berwick to the Naes in Norway, and another from Cape Finisterre to Cape Clear, or the most Southern point in Ireland, I conceive the space within those lines has been always reputed a part of the British seas; but I can't say this is the utmost extent of them outwards, there being some opinions that carry it further.

3. If a line be drawn from the North Foreland to Calis, and another from the islands of Scilly to Ushant, I think the space between those lines and the opposite shores describes that part of the British seas called the Channel; and the other space from the Channel to the Naes is also distinguished by the name of the German Ocean.

4. If the imaginary line from the Naes to Berwick be continued to Carlisle, and thence Westward by the coasts of Scotland and Ireland,

in about 56 degrees North, it may be a proper distinguishing boundary of the North Seas on this side, which are extended Northward to the coasts of Norway, taking in the Hebrades, Orchades, and all the islands, even to Islands.

5. To the Westward the British seas take in St. George's Channel, and as far beyond Ireland to the West as has been accounted and reputed to belong to the British seas, or according to the extent of possession thereof. Some will have it reach to Newfoundland or North America, but I do not find there is any certain point of boundary fixt by the Trinity House, or any writers of good authority in this particular.

6. All nations pretend to dominion at sea on their own coasts ; some extend it to no further than they can reach, some sixty miles, some a hundred or more, with regard to the seas which wash their borders, or opposite shores. But no rule can be drawn from thence, since their seas are narrower, and can't be compared with those of Brittain, which has no opposite shores to the Westward but in the British territories ; and if the British dominion may be extended as far from the Irish shores to the Westward in any proportion that the Ocean bears to the Mediterranean, the Gulf of Venice, the Euxine, Sound, Belt, or White Sea, which are possessed by several princes and states, who retain those respective dominions, the Queen of Britain may take in many more leagues than any of them do miles ; or if they claim by virtue of being possessed of opposite shores, her Majesty may, by the same rule, claim the Western Ocean beyond Ireland.

Lastly, if her Majesty may extend her dominion as far Westward as she does North and South from the shoare, it may be reasonably asserted

that the ship taken in the latitude of 53 degrees North, and about eighty or a hundred leagues West North West of Greenland was taken in the British Seas.

Which, nevertheless, I submit to the better judgement of those who have a more competent knowledge of the boundaries of sea dominion ; though I crave leave to observe that the British sovereignty has in all ages been asserted to the utmost extent of those seas which have been possessed by the Britains and Irish in the vast oceans of the North and West.¹

¹ In 1699 Hedges made a long report upon the same subject with reference to a sloop captured by the French 25 leagues S.W. of Ushant. It was claimed that the capture was not made within the British seas, within the meaning of those words in the agreement for cessation of hostilities. The substance of the report is that, according to English authorities, the British seas extend to the coast of Spain, and that Belle Isle, Oleron, and other islands in the Bay of Biscay are within the British seas ; that in the second treaty with the Dutch, as to the salute, the same limit was mentioned ; and he quotes Solinus, Pliny, and Pomponius Mela, and certain French writers. The claim of England to these seas he traces to the time when the kings of England were Dukes of Normandy and Aquitaine. He suggests a line drawn from the north of Ireland to Finisterre (Ushant), and from thence 'along the coast of Spain and France in the Bay of Aquitaine, and in the Channel on the coast of France and the Low Countries over against Britain,' as being the boundary. The British seas are not, he says, confined to the King's Chambers, as defined by James' proclamation (vol. 1, p. 357), the only purpose of which was to describe the waters in which fighting between the Dutch and Spaniards would not be allowed. He refers to two reports of the Trinity House ; one of 1668 (see *Add. MSS.* 30221, f. 19), stating that the English Channel is entered when Scilly is brought N.N.W. ; the other of 1671, that the British seas extend to the North Cape (Finisterre or Cape Ortegal). The treaty of peace of 1667 between France and England, he says, assumes that the British seas extend to Cape St. Vincent. On the

1713. First decree against a ship and cargo for non-payment of ransom money, and for the sustenance and wages of an hostage.—*Adm. Ct. Libels* 130, No. 237.

In the name of God, Amen. Before you . . . Charles Hedges . . . [*in common form*] . . . John Jenkinson, junior, against the ship called the Friends' Increase . . . whereof James Harris deceased lately was, and John White now is master, and her apparel . . . and against the said John White, in particular, and generally against all others claiming interest in her . . . propounds as follows :

In 1711 the said James Harris was master of the Friends' Increase, and with the concurrence of her owners had the charge and conduct of her. On the 7th of June in that year she was captured and seized upon the high sea, and within the jurisdiction of the high court of Admiralty, in the course of her voyage from Bristol to Virginia, as lawful prize, by a French privateer called the Triumphant. On the same day Harris ransomed her and her apparel and cargo for the sum of £180, to be paid by him, Harris, or his owners to Morpain or his partners,¹ and he delivered Jenkinson to Morpain as a hostage for the payment of the £180. Morpain received Jenkinson as such hostage, and has ever since detained, and still

whole he concludes that the sloop ought to be restored to her English owners. Other reports upon the same subject are in *Adm. Sec. Out Letters* 1052, f. 228 ; *In Letters* 3670, 16th June, 1721, 17th Oct. 1720, and 23rd May 1721. The proclamation as to prizes captured after the treaty of Breda is in *Adm. Sec. In Letters* 5246, ad finem.

¹ *Ordini*. Qy. partners.

detains him. The £180 has not been paid, and in consequence of the non-payment Jenkinson has been kept in prison by Morpain at Rochell from the 25th of November 1712, or thereabouts, and is still in prison. The cost of his food during his imprisonment amounts to £32 ; and his wages from the 7th June 1711 to 4th November 1713, at the rate of 25s. per month, amount to £35 19s. od. ; so that the aggregate of the sums due for ransom of ship and cargo, and for sustenance and wages of Jenkinson is £247 19s. od. The owners of the Friends' Increase have been asked to pay this, but have refused and still refuse to pay . . . [*Arrest of the ship by Jenkinson ; default of appearance ; first decree against ship and cargo in common form*].¹

W. Clements.

C. HEDGES.

1713. The deputy governor of the Eastland Company to Dartmouth (?), as to convoy for the trade to Swedish ports in Russian hands.—*S.P. Dom. Naval* 12, f. 193.

In answer to Mr. Burchett's letter to the Eastland Company of the 10th instant, and the extract of Mr. Jackson's letters from Stockholme relating to the interruption of the trade to those ports which the Czar of Muscovy hath taken from the Sweds, we observe therein the King of Sweden's positive order to carry up and confiscate all such ships as they meet tradeing to and from those ports. To prevent that evil, we humbly offer it as our opinion that the most effectual method

¹ The Latin original, which is long and full of repetition, is omitted. The translation gives its substance.

to preserve the trade is, to send sufficient convoys for the protection thereof.

THO. PHILIP, deputy governor.

19th Nov. 1713.

1714. Warrant to the Lords, to equip and victual four ships licensed by the Assiento.—*S.P. Dom. Naval* 14, 15th April.

ANNE R.

Whereas his Catholick Majesty by two licenses, dated at Madrid the seventeenth of January 1713, and by two other instruments or writings, dated also at Madrid, the fifteenth of June 1713, has consented that a voyage may be made to the Indies in the North Seas, in two several ships, of the burthen of five or six hundred tons each, to carry goods and merchandize to be sold and disposed of in some of the ports there; And whereas by the twelfth Article in the Assiento his Catholick Majesty grants that we may send two ships of warr, with the factors, officers, and others, who are to be employed in the service of the said Assiento; And whereas we have been graciously pleased to give and grant to the Governour and Company of merchants of Great Britain trading to the South Seas, and other parts of America, and for encouraging the fishery, the said licenses and Assiento, and as an instance of our ardent desire to promote the said trade, to order that the Elizabeth, Captain Samuel Vincent, and the Bedford, Captain William Cock, should be employed in carrying the said goods, according to the aforesaid licenses and instruments, and the Warwick, Captain . . . Partington, and

the Anglesea, Captain Robert Johnson. to carry the said officers and factors, and the charge of wages and victualls, wear and tear of the said four ships to be borne by us during their respective voyages ; These are therefore to will and require you to cause the said ships to be in all respects fitted for the said voyage, and victualled for eight months from their departure from England at whole allowance of all species, the two former for two hundred and fifty men, and the other two for one hundred and thirty men each ; And that you give orders that the commanders, officers, and seamen of the said ships observe all such directions as shall from time to time during the said respective voyages be given by the Court of directors of the said Governour and Company, or the major part of them, in relation to the said voyages ; And for so doing this shall be your warrant. Given at our court at St James¹ the fifteenth day of April 1714, in the thirteenth year of our reign.

By her Majesty's command.

Signed by Bolingbroke, and addressed to the Lords of the Admiralty.

1714. Wishart¹ to Burchett, as to Spain laying an embargo on British ships, and on this being stopped prohibiting the export of wine, fruits, &c, and refusing to give them bills of health.—*S.P. Dom. Naval* 14, f. 4

The king's pleasure having been signified to me by my Lord Townshend, (as I acquainted

¹ Admiral Sir James Wishart, on board the Rippon at Port Mahon, dated 24th Dec.

you in my last), for my repeating my instances for the redress of grievances His Majesty's trading subjects in those seas have suffered on the part of Spain, there was very soon occasion given for my putting them in execution, by the injuries which were at that time done to our merchants at Barcelona, concerning which I wrote to His Catholick Majesty's principal secretary of State. Soon after the departure of the messenger before mentioned, I understood that the Spaniards had added to that insult a greater, by having laid an embargo on four English ships at Barcelona, with the design to employ them in their service in the expedition they design against Majorca. Upon which I thought it necessary, in obedience to His Majesty's commands aforesaid, to send the Lord Forbess, with the Greenwich under his command, to that place, to obtain their being released and set at liberty to prosecute their respective voyages; and on his arrival there and application to Prince Tzerclaes de Tilly, Viceroy of Catalonia, that embargo was taken off. But they, having found by this and the steps which I have before taken in affairs of the same nature, that, (as I told the Duke of Berwick and Prince De Tilly in letters which I wrote them), I would take such measures as would effectually conduce the release of the ships they should embargo, they are, as I am informed since fallen into a method whereby they avoid the imputation of laying an embargo in a formal manner on our merchant ships, and at the same time answer their own ends as effectually as if they did so, they having in Catalonia, Valentia, Alicant, and Carthagena, prohibited the exportation of wine, fruits, or any other merchandize on board British ships, and con-

stantly refuse to give the masters of them, who would leave their ports, the customary bills of health ; which are practices entirely destructive to our commerce, and what I shall use my best endeavours to obtain redress of.

1716. Penrice¹ to Burchett(?); as to recaptures from the Moors.—*Adm. Sec. In Letters* 3669, 25 Oct. 1716.

SIR,

I have received the honour of your letter of the 16th instant, signifying to me the directions of my lords commissioners of the Admiralty to consider of and report my opinion, How Admiral Cornwall shall behave himself in relation to any ships that shall be retaken from the Moors, belonging to any other nation ?

The question being so very general, to consider it in its full extent may seem too tedious ; for some nations are at peace with the Moors, others are at war ; and with some of the Moors we are in amity, with whom some of our allies are at war, as the Dutch with the Algerines ; in which case, I presume, we are not to assist a friend against a friend. For the Algerines being at war with the Dutch may make lawfull prize of their ships ; but it would look like a breach of the amity between us and that country, if we should retake any Dutch ship from the Algerines taken by them as prize.

On the contrary pyrates and sea rovers, and such as have no lawfull commission to take ships, cannot acquire a just property in them, and if

¹ Sir Henry Penrice, judge of the Admiralty from 1715 to 1751.

any ships belonging to other nations should be taken by such persons, and retaken by Admiral Cornwall, I am humbly of opinion, upon due proof of property, such ships ought to be restored to their lawfull owners. But it is not fit for me to take up their lordships' time discussing the many points that may arise from this question ; being humbly of opinion that it may be sufficient at present for Admiral Cornwall to be directed to observe such instructions as he shall receive from my lords commissioners of the Admiralty, and to send their lordships an account of his proceedings, with the ship papers that shall be taken ; and if any thing should arise in the course of his voyage that may require my thought in point of law, I shall therein most readily give my assistance, and endeavour to discharge my duty to their lordships with all diligence and faithfulness.¹

I am Sir, your most humble servant,

H. PENRICE.

Doctors Commons,

Oct. 25, 1716.

1717. Sentence condemning to the King, as an Admiralty droit, the *Speedwell*, a rebel ship belonging to the Pretender.—*Adm. Ct. Libels* 131, No. 268.²

. . . Therefore we, Henry Penrice . . . [*in common form*] . . . pronounce and declare that

¹ A note is endorsed that Penrice is to be told that these Moors are different from the Algerines, and sail under the Emperor of Morocco's commission.

² Nos. 128, 132, and 164 on the same File relate to the *Vendome* and the *Lady's Adventure*, also rebel ships of the Pretender.

the said ship, the Speedwell, and her apparel and furniture, and the goods, things, wares, and merchandise, (if any), captured and seized in her as aforesaid, were, during the late conspiracy and rebellion wickedly stirred up and instigated in the part of Great Britain called Scotland, in the months of January, February, and March, 1714, or in one of those months fitted out and laden for his own use by a person falsely calling himself James the Third, and commonly known in England as the Pretender, or by other rebels and traitors, his friends and associates, or their maintainers, abettors, helpers, aiders, or assistants; and that [the said ship and goods] were in the month of March aforesaid rightly and lawfully captured and seized by the said ship the Swift sloop, whereof the said William Smith was captain, for the use of our said lord the King in his office of the Admiralty of England, as droits and perquisites of the Admiralty. And we further pronounce and declare that the said ship the Speedwell, and her apparel and furniture, and the goods, things, wares, and merchandise, (if any), that were in her at the time of her capture and seizure, belonged and appertained, according to proof made before us, to the said person so as aforesaid calling himself and pretending to be King of England, or to other rebels and traitors to our lord the King, his friends and associates, or to their maintainers, abettors, helpers, aiders, or assistants. Wherefore we pronounce and declare that the said ship the Speedwell, and her apparel and furniture, and the goods . . . in her . . . [*as before*] ought of right to be awarded, adjudged, and condemned to our most serene Prince in Christ, George, by the grace of God, King of Great Britain, France, and Ireland,

Defender of the Faith, &c., in the office of his Admiralty of England, as late belonging to the man calling himself and pretending to be king of England, or to other his friends and associates, rebels and traitors to our said lord, the King, or to their maintainers, abettors, aiders, helpers, or assistants, as droits and perquisites of the Admiralty of England, and by this our definitive sentence . . . [*condemnation in common form*].

Car. Pinfold,

H. PENRICE.¹

in absentia Ricardi Fuller.

. . . Idcirco nos, Henricus Penrice . . . [*in common form*] . . . dictam navem the Speedwell, ejusque apparatus et accessiones et bona, res, merces, et mercimonia, (si que sint), in eadem ut præfertur capta et seizita in nuperrimâ conjunctione sive rebellionem contra dictum serenissimum dominum nostrum Regem, in eâ parte Britannie que Scotia nuncupatur, per quamdam personam se Jacobum Tertium Anglie regem false nominantem, et vulgariter idiomate Anglicano vocatum the Pretender, mensibus Januarii, Februarii, et Martii, anno Domini millesimo septuagesimo decimo quinto, eorumve mensium uno, nefarie motâ et oriundâ, in usum dicte persone &c regem Anglie modo quo supra nominantis et pretendentis, vel aliorum ejus amicorum et sociorum, rebellatorum et proditorum, eorumve manutinentium, accessoriorum, consulentium, auxiliantium, aut assistentium instruitam² et onustam, et super alto mari, ac infra fluxum et refluxum ejusdem prope portum Dunquerque ad oras maritimas Flandrie situm, per dictam navem the Swift sloop, (cujus dictus Gulielmus Smith est capitaneus), in usum dicti domini Regis in officio suo Admirallitatis et qua jure et perquisita Admiralitatis predicte, rite et legitime mense Martii predicto captam et seizitam fuisse pronunciamus et declaramus; Dictamque navem the

¹ Judge of the Admiralty from 1715 to 1751.

² Instruita, in original; elsewhere the grammar is faulty.

Speedwell, ejusque apparatus et accessiones, et bona, res, merces, et mercimonia, (si que sint), in eâdem ut prefertur capta et seizita, tempore capture et seizure eorundem ad dictam personam se regem Anglie modo quo supra nominantem et pretendentem, aut alios ejus amicos et socios, rebellatores et proditores contra dictum dominum nostrum Regem, eorumve manutinentes, accessarios, consulentes, auxiliantes, vel assistentes, (quatenus nobis constat), spectasse et pertinuisse, etiam pronunciamus, decernimus, et declaramus. Quocirca dictam navem the Speedwell, ejusque apparatus et accessiones, et bona, res, merces, et mercimonia in eâdem, (si que sint), sic ut prefertur capta et seizita prefato serenissimo in Christo Principi ac domino domino Georgio, Dei gratia Magne Britannie, Francie, et Hibernie Regi, Fidei Defensori, etc. in officio sue Admirallitatis Anglie, tanquam navem et bona dicte persone se regem Anglie modo quo supra nominantis et pretendentis, aut aliorum ejus amicorum et sociorum, rebellatorum et proditorum contradictum dominum Regem, eorumve manutinentium, accessariorum, consulentium, auxiliantium, vel assistentium, et qua jura et perquisita Admirallitatis Anglie addicenda, adjudicanda, et condemnanda fore de jure debere pronunciamus et declaramus, sicque addicimus, adjudicamus, et condemnamus, per hanc nostram sententiam definitivam, sive hoc nostrum finale decretum, quam sive quod ferimus et promulgamus in hiis scriptis.

1718. Penrice to the Lords ; report as to the legality of a capture by an Ostender in the Downs.—*Adm. Sec. In Letters* 3669, 19th Sep. 1718.

The Fortune, bound to Bilboa, at anchor in the Downs less than half gun-shot of the castle and town of Deal, was seized at night and carried to Ostend.

. . . This being the fact it is most humbly conceived that the safeguard and protection

of the subjects and all others in league and amity with the kings of England to pass and repass the seas belonging to their kingdoms have been always a principal part of their royal care and concern, and they have always claimed as their undoubted right that within their ports, havens, roads, and creeks, as also in every other place or tract of sea that may be reasonably construed to be within any of those denominations limits or precincts, all hostilities should cease between all persons and parties whatsoever, and no violence or surprize should be done therein, the one against the other, but that all nations or parties whatsoever, so long as they shall be within their more immediate protection, shall be understood to be under their special safe conduct, and must keep the peace inviolably each with other. And this is consonant to the Rules Ordinances and Provisions made by kings of England and by them established and published to all the world, the violation whereof they have always resented as an insult upon their ports, a breach of the peace, and privilege thereof and as the highest indignity to their seas, and their sovereignty there and the honour of the nation, the privilege of ports and the just limitts thereof being inviolable from hostilities by the laws of nations; and there is an express clause in Trophy Bailes¹ commission *modeste te gerere intra limites hujus regni*. So that the ship Fortune and goods, so seized at anchor within half gun shot of the castle and town of Deal, without any further judicial enquiry into the property or other legal requisites, which is most humbly conceived to be needless in the present case, ought immediately to be restored

¹ One of those who seized the Fortune.

with satisfaction for loss sustained, and to be discharged and rendered back into a safe station as being unwarrantably seized in violation of the reverence due to His Majesties seas, forts, and chambers.

But supposing that the Downes in the largest sense and extent should not be regarded as *infra præsidia* but should be esteemed as at open sea, as the judge of the Admiralty at Ostend in his report to the Councill of State at Brussels would intimate, yet the station of this ship was so near the coast, being at anchor under Deal Castle within half gun shot of a fort of double use and security, both to prevent invasions from sea, and to keep the public peace at sea, as that she may be esteemed (without carrying the point further as not being the fact) to be within the King's chambers, and under His Majestie's more immediate care and protection, and that being the fact she was then indisputably in such a place where all nations must cease from hostilities and keep peace inviolably each with other.

All which is most humbly submitted to your Lordshipps great wisdom by

your Lordshipps most obedient and humble
servant,

H. PENRICE.

Doctors Commons,
Sep. 19, 1718.

NATHL. LOYD, G. PAUL, W. PHIPPS, WILL.
STRAHAN.¹

Vide Mr. Sec^y. Cragg's letters, 4th and 8th
September 1718.

¹ King's and Admiralty advocates, and civilians.

1719. Warrant for issue of letter of marque ;
bail for good behaviour.—*Adm. Ct.*
Prize Papers 63.

By the Commissioners for executing the Office of
Lord High Admiral of Great Britain Ireland
&c and of all his Majesty's Plantations &c.

Whereas by Commission under the great seal
of Great Britain bearing date the 30th day of
December 1718 We are required and authorized
to grant commissions unto such persons as we
deem fitly qualified in that behalf for the apprehending seizing and taking ships, vessels, and goods belonging to the King of Spain and his subjects, or others inhabiting within any of the territories of the King of Spain, and such other ships, vessels, and goods as are and shall be liable to confiscation, with other powers in the said commission expressed. These are therefore to will and require you forthwith to cause a commission or letter of marque or reprisal to be issued out of the High Court of Admiralty unto Captain James Fall commander of the Happy Janet, burthen about two hundred tuns, mounted with sixteen guns, and navigated with thirty two men, to set forth in warlike manner the said ship called the Happy Janet, whereof the said James Fall is commander ; and to apprehend seize and take the ships, vessels, and goods belonging to Spain, the vassals and subjects thereof, or others inhabiting within any of its countries, territories, or dominions, and such other ships, vessels, and goods, as are or shall be liable to confiscation, according to the said commission granted unto us for that purpose, and certain Articles and Instructions under His Majesty's

signet and sign manuel, (a copy whereof remains with you), and according to the course of the Court of Admiralty and Laws of Nations. And you are therein to insert a clause injoyning the said James Fall to keep an exact journal of his proceedings ; and therein particularly to take notice of all prizes which shall be taken by him, the nature of such prizes, the time and place of their being taken, and the value of them as near as he can judge ; as also of the station, motion, and strength of the enemy, as well as he can discover by the best intelligence he can get ; of which he is, from time to time, as he shall have opportunity to transmit an account to our Secretary, and to keep correspondence with him by all opportunities that shall present. Provided always, that before you issue such commission, security be given thereupon according as is directed by His Majesty's Instructions aforementioned : The said commission to continue in force until further order. For which this shall be your warrant. Given under our hands and the seal of the office of Admiralty this seventh day of July 1719.

[Signed by three of the Lords, and addressed to the judge. The condition of the recognisance for the ship's good behaviour is as follows :]

Which day and place personally appeared Thomas Lane, of the parish of St. Margaret, Lothbury, London merchant, John Soden, of the parish of St. Clement Eastcheap, London, merchant, and John Anderson of the parish of St Margaret, Lothbury, London, merchant, who submitting themselves to the jurisdiction of the High Court of Admiralty of England, obliged themselves, their heires, executors, and ad-

ministrators, to our sovereign lord the King in the summe of fifteen hundred pounds of lawful money of Great Britain, to this effect: That is to say, That whereas James Fall is authorised by letters of marque, or a commission for a private man of war, to arm, equip, and set forth to sea the ship called the Happy Janet, of the burthen of about two hundred tons, whereof he, the said James Fall, goeth captain, with men, ordinance, ammunition, and victuals, to set upon by force of armes and to subdue, seize, and take, the men of war, ships, and other vessels whatsoever, together with the goods, moneys, and merchandizes belonging to the King of Spain, or to any of his vassals and subjects or others inhabiting within any of his countries, territories, or dominions whatsoever, and such other ships, vessels, and goods, as are or shall be liable to confiscation, excepting only within the harbours and roads within shot of the cannon of Princes and States in amity with his Majestie. And whereas he, the said James Fall, has a copy of certain Instructions, approved of and passed by His Majestie in Council, delivered to him to govern himselfe therein, as by the tenour of the said commission and of the Instructions thereto relating more at large appeareth; If therefore nothing be done by the said James Fall or any of his officers, marriners, or company contrary to the true meaning of the said Instructions, but that the commission aforesaid, and the said Instructions, shall in all particulars be well and duely performed and observed, as far as they shall the said ship captain and company any way concern; And if they, or any of them, shall give full satisfaction for any damage or injury which shall be done by them, or any of them, to

any of His Majesty's subjects or allies or newters or their subjects, and also if the said James Fall and his officers and marriners shall duely and truly pay or cause to be paid to His Majestie, or to such other person or persons as shall be by His Majestie authorized to receive the same, the just tenths or tenth part, according to the due and legal appraisement, of all such ships and goods as shall be by them, or any of them, taken or seized, and shall be by due course of law adjudged to be good and lawful prize, and also shall duely and truly pay or cause to be paid to His Majestie, or the customers or officers appointed to receive the same for His Majestie, the usual customes due to His Majestie of and for all ships and goods so as aforesaid taken and adjudged for prize, And moreover if the said James Fall shall not take any ship or vessel, or any goods or merchandize belonging to theemie or otherwise liable to confiscation through consent, or clandestinely, or by collusion, or by virtue, colour, or pretence of his said commission, that then this bail shall be void and of none effect, and unless they shall so doe, they do all hereby severally consent that execution shall issue forth against them, their heirs, executors, administrators, goods and chattels wheresoever the same shall be found to the value of the said summe of fifteen hundred pounds before mentioned. And in testimony of the truth hereof they have hereunto subscribed their names.

THO. LANE, JN. SODEN, JN. ANDERSON.

Eodem die capt' et recognit' coram me.

H. PENRICE.

1719. Report of the Advocate General as to the ownership of goods recaptured from pirates.—*S.P. Foreign, Foreign Ministers &c.* 3, 6th Oct.

Sugars having been captured by pirates, and recaptured from them by an English ship, the French minister claimed them on behalf of their original French owners. The Advocate General was consulted as to the law upon the question,—‘How farr the first owner of the sugars may now bee entitled thereto; and what foundation there is for this demand?’ His report is as follows:

. . . I most humbly conceive that if the sugars are realy and bonâ fide the goods and effects of such French merchant, that then the spoil made by pyrats is not such a taking as can ever alter the property of the first owners; but that he may still pursue his claime thereto, and recover them wherever he can find them, and by whatsoever hands they may have been regained from such pyrats. However the first owner must make a reasonable allowance out of them by such persons by whom he has been benefitted in the recovery of his possession, and for keeping them and bringing them home; And this founded upon the law of nations, which allows not any alteration of property by piratical takings. And as pirats are enemies to all mankind, so all mankind must be friends to one another against pirats and their spoils. All which is most humbly submitted.

Oct. 6, 1719.

NAT. LLOYD.

1720. Sentence condemning to the King, as Admiralty droits, gunpowder and shot belonging to the Pretender, and captured ashore by the crews of three men of war.
—*Adm. Ct. Libels* 132, No. 237.

In the name of God, Amen. . . . Therefore we, Henry Penrice . . . pronounce, decree, and declare that the said goods and things captured and seized as aforesaid during the late conspiracy and rebellion . . . [*belonged to the Pretender, as in the sentence* p. 240] . . . And that, having been deposited and whilst still lying in the castle called Donan Castle, in North Britain, belonging to the late Earl of Seaforth, a rebel and traitor against our lord the King, the said goods and things were in the month of May rightly and lawfully captured and seized near the shore of North Britain aforesaid by the men of war called the Worcester, the Enterprise, and the Flamborough, to the use of our said lord the King in his office of Admiralty of England, as droits and perquisites of the Admiralty; And we further pronounce, decree, and declare that the said goods and things mentioned in the said schedule, and so captured and seized as aforesaid, at the time of their capture and seizure belonged and appertained, according to proof made before us, to the said person calling himself in manner aforesaid and pretending to be King of Great Britain, or to his friends and fellow rebels and traitors, against our lord the King, or to his maintainers, accessories, advisers, aiders, or abettors. Wherefore we pronounce, decree, and declare that the said goods and things so captured and seized as aforesaid ought of right to be awarded, adjudged, and condemned, as

droits and perquisites of the Admiralty of England to the aforesaid most serene Prince in Christ, and [our] lord George, by the grace of God King of Great Britain, France, and Ireland, Defender of the Faith, etc. in his office of the Admiralty of England, as the goods and things of the person calling himself in manner aforesaid and pretending to be the King of Great Britain, or of other his friends and fellow rebels and traitors against our said lord the king, or of their maintainers, accessories advisers aiders and abettors; and we award adjudge and condemn the same [accordingly] by this our definitive sentence, or this our final decree, which we pass and promulgate in these words.¹

Ric. Fuller.

H. PENRICE.

The above mentioned schedule.

Three hundred and forty barrels of gunpowder and five tons of fuzee shot.

1720. Opinion of the law officers as to the validity of a commission to try pirates anywhere on the sea, addressed to commanders and officers of H.M. ships.—*Adm. Sec. In Letters* 5251, f. 169.

. . . Before the Statute of 28th Henry 8, cap. 15, the jurisdiction of trying and determining pyracys and other offences committed on the sea was wholly in the Lord High Admiral and his commissarys, and the Statute of King William,

¹ The Latin original is almost identical in form with the sentence p. 240. The powder and shot were subsequently given by the King to the captors; *Adm. Sec. Out Letters* 1052, f. 184.

upon which the present question arises, seems by the preamble of it intended in some measure to restore the ancient Admiralty jurisdiction. But upon search in the Registry of the Admiralty we can find no precedent of any commission of this nature for the tryal of pyrates, to be executed at any place on the high seas at large.

The said Act of Henry 8, having taken away the Admiralty jurisdiction, and directed all pyracys to be tryed by the common course of the laws of the land, and in some shire or place within this realm, the consequence was that there would not be authority within your Majesty's colonys or plantations for trying of pyrates there; but though they happened to be taken in places very remote, (as the Act expresses it), yet they were to be sent into England to be tryed, and therefore the want of jurisdiction of this kind within the plantacons made this Act very necessary, and the inconvenience recited in the preamble, and intended to be remedied by this Act¹ was this, of being obliged to bring pyrates taken in the East or West Indies, or other places very remote, into England, which we conceive will be avoided by carrying such pyrates to be tryed in some colony or plantacon in the parts where they are taken.

These observations arise upon the general design of the Act; the particular provision thereby made is this, viz. . . . [*setting out the material words of ss. 1, 2, and 3*] . . . upon consideration whereof the intent of the Act seems to us to have been, that the commission should not be directed only to the commanders and officers of your Majesty's ships of warr, but also to

¹ 11 and 12 Will. III, c. 7.

Governors, Lieutenant Governors, and members of your Majesty's Council in some plantacons, or Presidents and Chiefs of some English factory, where, or on the sea adjoyning thereto, such commission should be executed, and that a certain place should be specially appointed in such commission for the execution thereof, which will not be complied with by a commission to be executed in any place at large upon the sea. For we conceive that, though the Act uses the words 'any place at sea or upon the land in any of his Majesty's islands, plantacons &c,' the intent was only to give a liberty for trying pyrates on shipboard, on the coast of a plantacon or colony, without laying a necessity upon the commanders of ships to bring them on shoar; and that this was the design of the Act seems more clear in regard the tryal of the offenders is to be according to the directions of this Act, several of which directions with respect to summoning witnesses and other privileges given thereby to prisoners cannot be complied with, (as we apprehend), in the case of a sailing commission to be executed upon the sea, wherever the commanders of the ship thinks fitt to carry the prisoners.

We have made the best enquiry we can into the precedents that have passed upon this Act of Parliament, and though the Act has been in force these twenty years, we cannot find that any such commission has been granted since the making thereof; and considering how much the seas have been infested with pyrates during that time, we conceive some instance or other of this kind would not have been wanting, if it had been thought warrantable by law. And as this commission is without precedent, so we are

apprehensive it may be attended with many inconveniencies.

But though we are humbly of opinion that such a commission as is above described ought not by law to be granted, yet we conceive that your Majesty, (if your Majesty in your royall wisdom shall think fitt), may grant a commission to the commanders of these men of warr, together with the Governors and officers of some English colony or factory on the coast of Affrica or elsewhere, (as the case shall require), to be executed either on land or within such colony or factory, or on shipboard on the coast adjoyning thereto, as occasion shall offer, and that a commission so framed will be warranted by this Act of Parliament.

All which is most humbly submitted to your Majesty's great wisdom and judgment.

NATT. LLOYD, RT. RAYMOND, PH. YORKE.

[*Note of the King's approval of this report, and order for a commission to issue accordingly.*]

1721. Order in Council for the issue of letters of reprisal against Hamburg to one whose ship had been robbed in the Elbe.—*S.P. Dom. Naval* 17 (1), f. 181.

His Majesty in Council, taking the said report ¹ into consideration, is pleased to approve thereof, and to order, and it is hereby ordered that letters of reprizall for the aforesaid damage be accordingly granted to the petitioner on the 21st of September next against the ships and effects of

¹ The report, stating the facts, is recited.

the subjects of Hamburgh, unless the State do make satisfaction to him, as well for his own damages as for those of the officers and company of the said ship, the Sea Flower, before that time. And one of His Majesty's Secretaries of State, is to signify this, His Majesty's pleasure, to the resident at Hamburgh, and to require him to communicate it forthwith to the Senate there.

1721. Penrice to Burchett (?), as to the limits of the British seas.—*Adm. Sec. In Letters* 3670.

The Lords of the Admiralty having asked, Whether by the 'British seas' mentioned in the convention with Spain of Feb. 1719 for cessation of arms the said seas ought to be allowed to extend as far as Finisterre? Penrice, after referring to the authorities cited by Hedges in his report of 1699 (*supra*, p. 231), and setting out the words of the convention, continues as follows:

By the treaty of cessation with France in August 1712 ships are to be restored that are taken in the Channel and in the North Seas after twelve days, and after six weeks taken beyond the Channel, the British seas, and the North seas, as far as Cape St. Vincent. This second limitation, though it fixes no certain bounds to the British seas, does not confine them to the Channell, but allows the British seas to comprehend seas different and contradistinguished from the Channel, which is taken only as a part of the British seas. The treaty of cessation with France in 1712 is confirmed by the treaty of peace with Spain at Utrecht in July 1713, by the 16 Article of which it is agreed to be well and

truly executed, according to the tenor thereof, in all things relating to captures made in the British or Northern seas or Elsewhere. So it is very plain by this treaty with Spain that the British seas must be extended beyond the chops of the Channel, though the boundaries are not expressed in the treaty. Since, therefore, it is allowed by the King of Spaine's advocate¹ that the British seas to the Southward are bounded by the coasts of Spain ; since, by the treaty with Holland in 1673 the Dutch have agreed to strike their flag in any seas as far as Finisterre, which must be taken to be in acknowledgment of the British sovereignty in those seas ; since, by their Lordships' Instructions to the captains of his Majestie's men of war, his Majestie's seas are declared to extend to Cape Finisterre ; and, since it does not appear by any treaty between Great Britain and Spain, either written or printed, that the extent of the British seas is otherwise specified or agreed between the two Crowns, these are reasons to induce me to think that the British seas mentioned in the first limitation of the convention for cessation with Spain may be taken to extend as far as Finisterre.

But this is humbly submitted to their Lordships' consideration, whose long experience and compleat knowledge in marine affairs will enable them to form a right judgment in this point, which has not yet been settled by any treaty that I know of.

[Dated June 16, 1721.]

¹ He refers to a passage in Alberic Gentilis, who was agent for the King of Spain in England in James I's reign, 'Hiberniæ meridionalia terminantur ad Hispaniam.'

1725. The Lords to Newcastle, disapproving of a proposal for joint operations by French and English ships against pirates, and sharing of captures.—*S.P. Dom. Naval* 18 (1), f. 166.

After reciting at length the French proposal, the letter (dated 5th March 1725) continues as follows :

. . . We do inform your Grace that the commanders of such ships of His Majestie as are from time to time sent, not only to Newfoundland, but to all His Majestie's foreign governments and plantations, and particularly to the coast of Guinea, have express orders to use their best endeavours to take, sink, and burn, or otherwise destroy such pirates as may infest those parts ; which ships, we apprehend, are of sufficient strength to perform those services ; and in case of the capture of any such pirates, they are directed to carry them forthwith to some one of the aforesaid governments, in order to their being tried by a court of Vice Admiralty on purpose established, and punished according to law for their crimes. But as to the ships or vessels in which pirates are taken, and the goods found on board them, they are to remain in the custody of the registers of the said courts of Vice Admiralty for the space of one year and a day after condemnation ; that so such persons to whom they belonged before they were seized by the pirates may have opportunity of putting in their claim to and recovering the same, in case they produce satisfactory proof ; for being so seized by pirates doth in no wise alter the property, either of the ship or of the goods. And therefore this cannot in any degree square with what hath been pro-

posed by the most Christian King ; for should the ships and goods taken from pirates when his ships of war and His Majestie's happen to be in company of each other, be divided between the commanders and companies of such ships, it will be very difficult, if possible, for the persons who may have a legal right to the ships and goods so seized from the pirates, to have opportunities of making claim to and recovering the same as afore-said, where part thereof shall be in the custody of the commanders of His Majestie's ships, and the other part in the hands of those who commanded the ships belonging to France.

As to dividing the pirates themselves who shall be taken, we cannot conceive how the doing thereof can in any measure contribute to the reducing those nests of searobbers, but that, on the contrary, it will have a different effect ; for the more speedily they are brought to justice for their crimes, the more it will deter others from such evill practices. And as several have been taken, tryed, and executed at His Majestie's foreign governments, and also on the coast of Africa by virtue of special commissions for the purpose, without regard to what nation they belonged, so is it looked upon to be reciprocally incumbent on all maritime Princes and states, (for the general benefit of mankind), to bring to speedy and condign punishment all such pirates, whoever they may be, who may happen to be met with and seized by their men of war.

[The letter goes on to point out that the statement of the French government that similar joint operations against pirates had been taken in 1721 is a mistake, and concludes :]

We do not foresee any advantage can attend the giving such orders to the captains of His

Majestie's ships to act in concert with those of France against the pirates in the manner that is proposed, either at Newfoundland or elsewhere ; but that, on the contrary, it may, for the reasons aforesaid, be very prejudicial to the owners of such ships and effects, of what nation soever they are, as may fall into their hands, should the same be divided among the officers and companies of the ships of both nations which may happen to seize them, and may likewise obstruct the bringing the pirates to such speedy and exemplary punishment as is necessary to deter others from committing the like villainies on the seas.

JNO. NORRIS, D. PULTENEY, CHAS. WAGER,
J. JENNINGS, W. CHETWYND.

1725. The Lords to Newcastle, asking that more definite and stringent orders be given to the ships at Jamaica to seize Spanish guarda costas ; the new order.
—*S.P. Dom. Naval* 18 (1), ff. 172, 174.

Having, with our letter of the 10th of April 1723, transmitted to the Lord Carteret, then principal Secretary of State, extracts of two letters from Captain Barrow Harris, commander in chief of His Majesty's ships stationed at the island of Jamaica, giving an account of the taking and plundering the trading ship of His Majesty's subjects in those parts by the armed vessels of the Spaniards, pretending to be guard de costs [*sic*], his Lordship having signified His Majesty's pleasure that the captains of His Majesty's ships stationed at that island should be directed, if

they meet with any such vessels, which they should have reason to suspect had illegally taken and plundered any of His Majesty's subjects as aforesaid, to bring them to Jamaica, that so they might be proceeded against according to law; but that they should act cautiously in the execution of those orders, so as not to give just cause of complaint to the Spaniards. And it having been since represented that even that grievance increases, insomuch that His Majesty's trading subjects are more prejudiced by the aforesaid Spanish ships than by the pirates that infested those seas; We think it necessary to desire your Grace will please to lay this matter before His Majesty for such further directions as His Majesty shall think proper to be given to the commanders of his ships for the more effectually preventing such injuries to his subjects for the future, in regard the aforesaid caution puts them under difficulties how to behave themselves in the execution of the orders they have already received; Captain Thomas Scott, who is appointed to succeed Captain Harris in the command of His Majesty's ships at Jamaica being ready to proceed on the aforesaid service.

Consequent upon his letter the following substituted order was issued (*Ibid.* f. 174).

Whereas it has been represented to us that the merchant ships and vessels of His Majesty's subjects have been frequently illegally seized and plundered by armed vessels of the Spaniards in those parts; We do, in obedience to His Majesty's commands some time since signified to us by the Lord Carteret, then principal Secretary of State, hereby direct and require you, upon your arrival at Jamaica, to bring in there such Spanish

armed vessels as you may suspect to have so illegally taken and plundered His Majesty's trading subjects, and to give orders to the respective Captains of His Majesty's ships, which may be under your command, to do the like. But both yourself and they are to take particular care to act cautiously in the execution of this His Majesty's pleasure, that so no just cause of complaint may be given to the Spaniards. Given under our hands, this 24th April 1724.

W. CHETWYND, J. NORRIS, C. WAGER,
D. PULTENEY.

1725. Order in Council for a commission to be made out for the captain of H.M.S. Kinsale to try pirates taken off the coast of Africa. — *S.P. Dom. Naval* 139, 5th August.

Upon reading this day at the Board the draught of a commission prepared by Sir Nathaniel Lloyd, his Majesty's Advocate general, empowering the commander of his Majesty's ship the Kinsale, in conjunction with the principal agents belonging to the African Company at their settlements abroad, to try and execute such pirates as may happen to be taken on the coast of Africa during the said ship's continuance in those parts ; Their Excellencies the Lords Justices in Council are pleased to approve thereof, and to order, and it is hereby ordered that the said draught of a commission, (which is hereunto annexed), do pass by immediate warrant under the great seal of his Majesty's high court of Admiralty ; and Charles Delafaye, Esquire, secretary to the Lords Justices,

is to prepare a warrant for their Excellencies' signature.¹

1727 (*circa*). Instruction as to enforcing the salute, and as to saluting forts.—*S.P. Dom. Naval* 18 (2), f. 478.

Art. 21 of the Instructions to captains in the fleet which were in force during 1727–1731, but of which the date is not given, is similar to the Duke of Yorke's Instruction of 1673 printed above (p. 86), with the following addition :

. . . And you are further to take notice that in his Majesty's seas his Majesty's ships are in nowise to strike to any, and that in other parts

¹ Under the Act of 1537 (see Vol. I, p. 149) it was necessary to bring pirates taken abroad to this country for trial. To avoid the difficulties and expense caused by this, in 1700 an Act was passed enabling the crown to appoint commissioners to try them abroad, or on board H.M. ships. The commissioners were to be officers of the navy, or merchants, or planters, in the colonies. In England the execution of pirates took place at Wapping, and the precept, or order for execution, addressed to the marshal of the Admiralty court, may preserve some old custom peculiar to the Admiral's jurisdiction. The precept to execute Kidd (*supra*, p. 184) is preserved. After directing the marshal to receive the criminal from the gaoler, it proceeds : *ac eosdem Gulielmum Kidd, Darby Mullins et Johannem Eldridge usque ad furcas in publico flumine ac rivo Thamesis, infra fluxum ac refluxum maris et aquæ, ac jurisdictionem Admirallitatis nostræ prædictæ, ante ripam vocatam Wapping sitas et positas, die Veneris vicesimo tertio dic mensis Maii instantis sub salvo conductu et custodiâ ducas, ac ipsos Gulielmum Kidd quemlibet Darby Mullins et Johannem Eldridge et Eorum per collum suspendas, seu suspendi facias, usque dum mortui, et eorum quilibet mortuus fuerit, juxta consuetudinem maritimam ab antiquè habitam et observatam*; *Adm. Sec. Out Letters* 1048, p. 52. Kidd was one of the first who was tried under the Act of 1700.

no ship of his Majesty is to strike her flag or topsail to any foreigners unless such foreign ships shall have first struck or at the same time strike her flag or topsail to his Majesty's ship, except in the harbour of some foreign Prince, or in the road within shot of cannon of some foreign Prince or castle, where you are to send ashore to inform yourself what return they will make to your salute. And in case that you have good assurance that you shall be answered gun for gun, you are then to salute the fort as is usual ; but if you shall not be well assured that you shall have an equal number of guns returned you, you are in no wise to salute that place. And in case the ship wherein you now command shall at the same time carry his Majesty's flag, you are, before you salute the place, carefully to inform yourself how flags of the same quality ¹ with what you carry of other Princes have been saluted there ; and you are to insist on it to be saluted with as great respect and advantage as any flag of the same quality with yours of any other Prince has been saluted in that place ; from which you are in no wise to depart.

1727. Opinion of the law officers as to the power of the crown to order the seizure of Spanish ships and goods, without a declaration of war.—*S.P. Dom. Naval* 138, 22nd March.

In humble obedience to your Majesty's commands signified to us by letter from his Grace the Duke of Newcastle, one of your Majesty's principal

¹ The records of the period show that disputes arose as to this.

Secretarys of State, dated the 21st instant, whereby we are directed to lay before your Majesty our opinion whether, as the King of Spain has now actually begun hostilitys against your Majesty and your subjects by the attack of Gibraltar, and the seizing of the effects of British merchants in Spain, your Majesty may not, without declaring war against Spain, give orders to your Admirals and the other officers of your forces at sea and land, and to all others whom it may concern, to treat the King of Spain and his subjects as enemys, and exercise all sorts of hostilitys against them, and seize and secure any effects that shall belong to the King of Spain or any of his subjects, in the same manner as if a declaration of war had been issued and published in form against the said King of Spain.

We humbly certify your Majesty that the question stated in the said letter is not properly a consideration of the law of England, but of the law of nations, the rules and decisions of which law are the guide of every particular government in cases of this kind. And so far as we have been able to inform ourselves of that law, we apprehend that the King of Spain, by laying siege to Gibraltar, part of your Majesty's dominions, and continuing that siege, has broke the peace, and is now in actual war with your Majesty. And since a state of war must be mutual, it seems to us to be a necessary consequence that your Majesty is already in war with the Catholick king.

As to the declaring war against Spain, the King of Spain having been the aggressor by the attack of Gibraltar, we conceive that amounts to a declaration of war on his part, and gives your Majesty a right to return hostilitys in such manner as your Majesty shall think fit.

From hence we conclude, and are humbly of opinion, that your Majesty, without publishing any formal declaration of war against Spain, may give such orders to the Admiral and other officers of your Majesty's forces at sea and land, and any other persons, as are described in the above mentioned letter. All which is most humbly submitted to your Majesty's royal wisdom.

[Signed P. Yorke, C. Talbot, and dated 22nd March 1728. Dr. G. Paul's report (*Ibidem*) of 23rd March is to the same effect.]

1727. Wager¹ to Burchett, as to embezzlement from prizes.—*S.P. Dom. Naval* 18 (2), f. 512.

I shall be glad to have some directions about the disposition of prizes, when they are condemned, for the longer they lye, the greater will be the embezzlement, which I find is almost if not always impossible to prevent, everybody thinking they have a right to get what they can, especially if they belong to the ship that took her.

1727. Wager to Burchett, as to the capture of a French (friends') ship with timber on board for the building of a ship of war at Cadiz.—*S.P. Dom. Naval* 18 (2), f. 598.

. . . I remember well that in the late wars it was the common custom, when a neutral ship was met with that had effects on board belonging to the enemy, those effects were allways taken

¹ Sir Charles Wager, afterwards first lord of the Admiralty.

out, the freight paid, and the ship released, which was as much as in reason could be expected ; and the same thing was done in this case, or rather more, for here the master had what freight he thought fit to demand, without producing the original charterparty or bill of lading ; and for the timber had as much as it was really worth, or very near it ; though I have been since told that he received good part of the freight for the said timber from the king of Spain's officers, and so received a double freight ; and his staying so long at Gibraltar was his own fault ; he was not detained. I shall only add that, if the Spaniards, in time of war, have their effects carried in French ships from port to port without being stopt by us, whilst the Spaniards take our merchant ships in all places, such war would be unequal, and the Spaniards would have no more to do than to hire French ships to bring all their treasure from the West Indies, and then it might pass through our fleet without being molested or questioned, to Cadiz or any other port. I hope these papers will be sufficient answer to the complaint of the owners of the said ship.¹

1728. Commission appointing all the members of the Council to be commissioners to hear appeals in prize.—*Adm. Ct. Miscellanea* 92.²

George the Second by the grace of God &c. . . .
To . . . [*naming all the members of the Privy*

¹ The St. Michael of Bayonne was laden with timber bought by the King of Spain for building a ship of war at Cadiz.

² Original commission, under great seal. In 1829 a commission issued to the Lord Treasurer and six other Privy

Council] . . . and all and every our Privy Counsellors for the time being, Greeting. Whereas in causes of prizes suits do or may many times happen in our courts of Admiralty in this Kingdome of Great Britaine, and the courts of Admiralty in our plantations in America, whereupon, sentence being given, the party against whom such sentence has been given, or shall be given, finding himself aggrieved, doth or may desire to appeal from that sentence to some other judge or commissioner, who may receive the same, and either affirm or reverse the sentence formerly given, as the case in justice shall require ; Now to the end that speedy justice may be administered to all persons, and that neither our friends or allies or their subjects, or our own subjects whom it may concern may want ready means to have a review of such sentence in the case aforesaid, if they shall conceive cause for the same according to the usuall course of our laws ; Now Know ye that Wee reposing especiall trust and confidence in your approved wisdomes, fidelities, and circumspections, Have nominated, constituted, ordained, and appointed, and by these presents do nominate, constitute, ordain, and appoint you and all and every our Privy Counsellors for the time being to be our commissioners for reviewing, hearing, and determining of appeals in the cases aforesaid for and during our pleasure. And Wee do hereby give

Councillors constituting them a standing committee to hear prize appeals (see *Rymer*, xix, p. 300). Before this a separate commission had issued for each appeal. In 1762 the Chief Baron of the Exchequer, the Justices of the King's Bench and Common Pleas, and the Barons of the Exchequer were appointed appeal commissioners in addition to the Privy Councillors ; *Adm. Ct. Miscell.* 100.

you and them, and any three or more of you and them full power and authority, from time to time, upon any appeal in due form of law made in that behalfe, to review and examine the proceedings had and sentence appealed from in any cases or cases sentenced or adjudged, or to be sentenced or adjudged in our said courts of Admiralty in this our Kingdome of Great Britain, or in any of the courts of Admiralty in any of our plantations in America, concerning all such prizes, as well those which now are, or here to fore have been, or hereafter shall be depending in any of the said courts, and such the decrees, proceedings, and sentences, of any of the said courts to affirm, reverse, alter, or make new, respectively, as in the judgment of you and them, or any three or more of you and them, shall be thought fit, and the severall cases shall in justice require ; And that you and they, and any three or more of you and them, may and shall by examination of any witnesse or witnesses in due form of law, or by any other lawfull ways or means, discover and find out the truth of [the] premisses, whereby our pleasure of having justice done to all persons whatsoever may be the better effected in this behalfe. And further Wee doe hereby give unto you our commissioners, and all and every our Privy Counsellors for the time being, or any three or more of you and them, full power and authority to call to your assistance any doctor of the civil law, or any such other person or persons as you and they, or any three or more of you and them, shall think fit to be employed in this our service, and also to constitute and appoint any surrogate or surrogates whereby this our commission may the better be executed. And our will and pleasure is that

whatsoever you and they, or any three or more of you and them, shall do, decree, and sentence, in and about the premises shall be firm and inviolable, and shall receive and be put in due execution with effect. And these presents, or the inrollment thereof, shall be to you and them, or any three or more of you and them, for the doing and executing the premises a sufficient warrant and discharge. In Witnesse whereof Wee have caused these our letters to be made patents. Witnesse Ourselfe at Westminster the sixteenth day of May, in the first year of our reign.

1729. Translation of Spanish commission to a guarda costa.—*S.P. Dom. Naval* 19, f. 433.¹

By Don Dionysio Martines de la Vega, Brigadier in His Majesty's army, His Governor and Captain General of this city of the Havanna, and island of Cuba &c.

Whereas Captain Don Felix Joseph da Costa Hurtado junior hath made his request to me, that I would grant him liberty in the same manner as has been done to other Captains fitted out to sea in a warlike manner as privateers to cruise on the seas on the coasts, havens, bays, or anchoring places round the island of Cuba ; Now know

¹ The bearer of this commission the Santa Rita, mistaking H.M.S. Dursley galley for a merchantman, attacked her and was captured. She was taken into Port Royal, and her crew were put upon their trial in Jamaica for piracy. They were acquitted, but the court expressed its opinion 'that the prisoners should be remanded to goal until his Excellency [the governor] should determine what was proper to be done with them.' A copy of the proceedings at the trial accompanies.

ye that by virtue of the power and authority granted unto me in a schedule¹ of the 6th of June 1728, and a written order of the 20th of November 1727 from the most illustrious lord Don Joseph Palmo, of His Majesty's Council, Secretary of State, Marine, and the Indies ; Also having weighed the several good qualitys, as well of valour, experience, and practice, not only in naval but in military affairs conspicuous in the above mentioned captain ; and he being actually in possession of a sloop now in this port called the Santa Rita, and the souls (?) armed with six guns, six patereros, seventy musquets, with ammunition proportionable, carrying eighty men completed and victualled ; By these presents, in the royal name of His Majesty, (whom God preserve), and in conformity to the above mentioned schedule royal and written order, I constitute and name the said Captain Don Felix de Hurtado, and do hereby authorise him to arm out in a warlike manner the said sloop, whereby he may exercise that office or function in that sloop or embarcation, which he shall think necessary to depute or substitute against those who shall traffick in these seas, loaded or loading with logwood or other woods for dying, in the ports, and upon the coasts of our lord the king, and against any other embarcations who shall introduce or trade in prohibited goods, as well under sail as at an anchor, in the ports, bays, or other places frequented by any shipping upon the island of Cuba ; And in the same manner, if he shall find upon the said coasts any notorious pirates that do infest the same, he has in that case

¹ Cedula. The original Spanish commission is wanting, and the translation is faulty.

liberty granted him to levy men in that same place, as well as in any other parts of this island, by publick proclamation in conformity to the usual practice ; And having made capture of any prise or prises, he is either to send them or bring them to this port of the Havanna, having no lawful impediment to the contrary ; and, after a judicial condemnation, the whole value of the prise or prises may be distributed between the captain and his people, and those at whose charge the privateer was fitted out ; the enjoyment whereof I yield to them in conformity to the above mentioned royal orders ; And for execution of the whole I grant unto them all necessary power and authority ; And I do hereby strictly enjoyn all the men already levied for the abovementioned sloop to receive and obey for their captain, armed out as a privateer, the already mentioned Don Felix Joseph de la Costa Hurtado, and from this time forward, in the name of His Majesty, (whom God preserve), and by virtue of his royal authority I do appoint, and he is hereby appointed to use and to execute this his employ with all the essential privileges, enjoyments, and emoluments annexed thereunto, without the least diminution ; And I ordain his orders to be obeyed, not only by writing, but by word of mouth, in the same manner as if they had been wrote or spoke to by myself under the penalty of severe chastisement to those who shall act anything to the contrary. And if by any accident of wind or weather he shall meet with any squadrons of ships of war of his Majesty, and if he shall arrive into any of the ports of his dominions, it is my request and desire of all general officers, judges, and courts of justice that they shall give all favour and assistance that may be asked and thought needful for the

abovementioned Captain fitted out in a warlike manner, taking care that he may be supplied with ammunition and provisions at the currant prices at the places where he shall arrive. And having given, and being also offered for his security Don Miguel d'Isagora, a substantial person inhabiting near this town, the same received before and executed in the presence of the principal secretary of the said captain, by virtue of this patent, may carry the colours usually carried by virtue of such a commission, which I have ordered to be delivered to him. Signed with my own hand, sealed with my own coat of arms, and countersigned by the secretary of the government and war, who is to enter a copy of the same in his office, and to make a remark at the bottom of it of the proffered abovementioned security, that the same may appear. Done at the Havanna, 16th of April 1729 N.S.

DON DIONYSIO DE MARTINES DE LA VEGA.

1730. Instructions to Rear Admiral Stewart to seize Spanish privateers and piratical craft in the West Indies, and to detain them until restitution is made to Englishmen who have been robbed.—*S.P. Dom. Naval* 59, 29th September.

After reciting that, notwithstanding the peace and treaty recently made with Spain, English ships in West Indian waters were harassed by Spanish privateers and pirates, and that no redress could be obtained, the Instructions continue as follows :

You are, in pursuance of his Majesty's pleasure, signified to us by his grace the Duke of Newcastle,

principal secretary of state, to direct the captains of the ships under your command, upon their meeting with such vessels, of what nation soever they be, whose commanders cannot shew any legal commissions for their cruizing, or having commissions shall have unjustly robbed his Majesty's subjects, contrary to the treaties, to seize and bring them into port, where they are to be detained until satisfaction shall be made for such ships, vessels, and goods of his Majesty's subjects as have been taken by them, or other freebooters, ships or vessels of the nation they belong to, taking care that neither officers nor men be ill treated, nor any part of their goods or furniture embezzled. But if any acts of piracy can be proved upon any of the men belonging to the vessels so seized, they are to be delivered up to be tryed according to law.

And His Majesty, in order to do his subjects speedy and effectual justice, having signified his pleasure to the governors of his several colonies, that when any of his subjects following their lawful trade in America shall be unjustly plundered or dispoiled of their ships or goods by any persons of what nation soever, the said sufferers do by the first opportunity give in the most authentick proofs of the damage and losses they have sustained, upon oath before the judge of one of the Vice Admiralty courts in the plantations ; which judge, after due examination of the matter, is to deliver to the said sufferers a declaratory sentence under his hand and the seal of the court, setting forth the particular circumstances of the fact, when, where, and by whom committed, from what port the vessel or vessels that did the damage was or were fitted out, and to what port the ships or goods were carried, and the

value of the same, and that the whole hath been duly proved upon oath before him ; Which sentence, or a duplicate thereof, is to be lodged in the hands of the governor of the colony where such declaration is made. You are, in pursuance of his Majesty's further pleasure signified to us as aforesaid, when the governor of Jamaica shall deliver to you any such declaration, to repair yourself, or send one or more of the ships under your command, to the port where such ships or goods of his Majesty's subjects shall have been carried in, or from whence the ships or vessels that have taken the same were fitted out, where an attested copy of the said declaration is to be sent on shore to the governor, and a demand made of the immediate releasement of such of his Majesty's subjects as may have been taken, together with restitution of the ships or goods so plundered or taken, or the value thereof, or else the delivery of the persons and ships which committed the fact. But if neither shall be complied with, you are to cause as many ships or vessels of that nation to be seized, till you have gotten a sufficient compensation in your hands, and then to acquaint the governor or governors of the place or places that the vessels of his Majesty's subjects shall have been carried into, of what you have done, and the reasons thereof ; and that upon restitution made of the effects of his Majesty's subjects, or the value thereof, you are ready to restore the said vessels and their cargoes, which is accordingly to be done ; otherwise, the same are to be detained until further signification of his Majesty's pleasure thereupon ; taking care that no embezzlement of the loading, stores, or furniture of the said ships or vessels be committed.

276 SEIZURE IN HARBOUR—RESTITUTION

Similar instructions issued to other commanders in American waters. It is doubtful whether they were ever executed. During the following two years they were, at the request of the Jamaica merchants, suspended and afterwards renewed ; on 30th Oct. 1732 they were finally suspended.

1730. Sentence of the Antigua Vice Admiralty court ordering restitution of a French shallop captured in Basse Terre harbour.—*S.P. Dom. Naval* 20 (2), f. 409.

. . . I do . . . in pursuance of the orders and directions contained in the above-mentioned proclamation, the premises having been first duly proved upon oath. . . . Pronounce and declare the said seizure, or capture, and detention of the said shallop, with her tackle, rigging, and furniture belonging to the said ship *Prosperity* by Captain Hibbert, in the harbour of Basse Terre, in the aforesaid island of Guadaloupe, to be unwarrantable, unlawful, and unjust, and contrary to the peace and amity by solemn treaties made and subsisting between the crowns of Great Britain and France ; And that the said shallop, together with her rigging, tackle, and furniture, ought to be forthwith released, discharged, and restored ; And that the value thereof and damages, as above sufficiently proved, be paid to the said sufferers, Thomas Roberts, and Daniel Henderson, for the use of the owners of the said ship *Prosperity*.

STEPH. BLIZARD.

[*Dated 14th Dec. 1730.*]

1731. Notes of correspondence between the Lords and Stewart as to Spanish depredations, the orders for reprisals, and the difficulties they will raise.—*S.P., Dom. Naval* 21, f. 89.¹

1731. From the Lords of the Admiralty, May 15.

They inclose copy of Rear Admiral Stewart's of March 8. He sent to Porto Rico to demand the ship of one Benson, producing a declaratory sentence, but restitution was refused. He then would have made reprisals, but the opinion of the South Sea factor, and of all the merchants in general, that not only the South Sea ship at Porto Bello would be seized, but all our merchantmen would be taken by the Spaniards that they could meet with, and those seas soon filled with Spanish privateers, has engaged him to suspend the execution of those orders. He encloses the representation of the South Sea factor. The merchants did not care to give theirs under their hand, for fear of disobliging their freindes in England.

To the Admiralty, June 3.

His Majesty, by the advice of the Committee of the Council, has approved of Rear Admiral Stewart's suspending those orders; which the Lords of the Admiralty are to signify to him, and that he may soon expect His Majesty's orders for his further conduct.

To the Admiralty, Oct. 29.

The reason for that suspension being in great

¹ Parts of the précis or notes, relating to documents already printed above, and other matters of small interest, are omitted.

measure ceased, by the safe arrival of great part of the effects of His Majesty's subjects, which were in the Spanish ports, Rear Admiral Stewart and the captains of His Majesty's ships in America are to execute the orders for reprisals. South Sea memorial about Fandino.¹

Rear Admiral Stewart, Oct. 12 ; [rec^d. Jan. 22.]

We have fifty trading ships to one of the Spaniards in those seas ; so in this way of making reprisals we must in the end be losers. We are the aggressors ; by our illicit trade, carried on by armed sloops, or with convoy, in defiance of law. The Spaniards retaliate by robbing such of ours as they can master. Our illicit traders are cruel to the Spaniards ; murdered seven or eight of them on their own shore ; to prevent those cruelties, convoys have been allowed them. This trade, formerly advantageous to Jamaica, not so at present. The merchants impute (?) it to the South Sea company. The Spaniards formerly had no *garda costas* ; now they have them, and by this means the Dutch have within these few years lost £700,000. The merchants overstock the trade, and are obliged to sell cheap. The South Sea trade, no advantage ; yet if that were abolished the negro trade would fall into the hands of the Dutch, who would undersell us. The Spanish method of guarding their coasts will keep that part of the world always in a state of war. Villany is inherent to that climate. The traders of Jamaica as great rogues as the Spaniards. His dispute with the merchants of Jamaica ; has sent an answer at large to the Admiralty. The present behaviour

¹ A noted pirate.

of the Spaniards to us will appear from the quantity of money gone home in the South Sea ship, and in several other ships gone home poor ; left ten millions in goods behind them. The only thing we have to complain of is the *garda costas*, as terrible to the trading part of the Spaniards as to us. He was surprised at the treatment of Jenkins, the governor of Havanna having a fair character. Porto Rico the worst place ; Henriques, who lives there, does the most mischief. If he and that Government could be made examples of, it would in great measure put a stop to our complaints. The only men of war the Spaniards have in those seas are one of sixty guns, and two or three from twelve to sixteen guns. The two sloops, about which the dispute has been, are discharged. They are all that our cruizers could meet with in a twelve month. He thinks there is not one Spanish merchant ship in those seas.

* * *

To the Admiralty, Feb. 18.

The new cédulas sent them ; and orders that, in case they are disobeyed or eluded, the orders for reprisal of 25 Sep. 1730, renewed 19 Oct. 1731, be put in execution.

1732. Agreement between England and Spain as to steps to be taken to put a stop to hostilities in American waters.
—*S.P. Foreign, Foreign Ministers &c.*
59.

Declaration which we the underwritten ministers of their Britannick and Catholick

Majesties make, by virtue of the orders which we have from the Kings, our respective masters :

Whereas complaints have been made that since the arrival of His Catholick Majesty's orders at Carthagena, on the 22 of June 1728, and even since the signing of the treaty of Seville, acts of hostility have continued to be committed on the part of the subjects of His Catholick Majesty in America, and that the vessels of His Britannick Majesty's subjects have been unjustly seized and detained, which appear to have been chiefly practised by ships belonging to private persons fitted out to cruize under the plausible pretence of preventing a clandestine and unlawful trade ; His Catholick Majesty, having agreed by the treaty of Seville to cause reparation to be made, as soon as may be, for the losses and damages which have been sustained on account of the said captures, promises and engages, pursuant to the said treaty, and to the declaration relative thereto, which was signed on the sixth of June last year, that such reparation shall without delay be fully and effectually made in due form, according to the tenor of the treaty of Seville ; And, in order to prevent the like depredations for the future, His Catholick Majesty does moreover promise and engage not to permit his Vice Roys, Governors, or other officers in America, either by their commissions or in any other manner, to encourage, protect, or authorize such pernicious practices ; but that, on the contrary, the strictest orders shall be sent them to do every thing that shall be in their power to prevent the like happening ; to the end that the lawful commerce and navigation of His Britannick Majesty's subjects to their colonies and their ports may be carried on freely, and without

molestation, agreeable to the several treaties on that subject.

His Catholick Majesty also promises and engages by this declaration, that whenever any privateers, under the denomination of Garde Côtes, or any other denomination whatsoever, have leave to fit out for sea, in order to prevent contraband trade, pursuant to the laws and ordinances of the Indies, which have not been derogated from by the treaties, they shall be obliged to give security in the presence of the governors of the places from whence they shall sail to be answerable for any damages they may unjustly occasion, and in default of sufficient security the governors themselves shall be answerable for whatever may happen ; His Catholick Majesty hoping that proper orders shall reciprocally be given on the part of His Britannick Majesty for causing the hostilities to cease, which the Spanish ships have met with since the 22 June 1728, and for making good the losses and damages which the subjects of Spain shall have unjustly sustained.

In like manner His Britannick Majesty promises to forbid and effectually to prevent his ships of war from countenancing, convoying, and protecting, under any pretence whatsoever, ships carrying on an unlawful trade upon the coasts of the States belonging to His Catholick Majesty ; and the governors of the colonies from authorizing and encouraging any landing upon the said Majestie's dominions. And the Catholick King promises to do the like, on his part, thereby to avoid all cause of complaint, which might interrupt the good correspondence between the subjects of the two nations. In witness whereof we, the underwritten ministers of their Britannick and

282 COMMISSION TO CAPTURE PIRATES

Catholick Majesties have signed the present declaration and put the seals of their arms thereto. Done at Seville, the 8th day of February, 1732.

B. KEENE, IL MARQUÉS DE LA PAZ,
DON JOSEPH PATINO (?).

1737. Warrant to affix the great seal to four commissions to capture pirates.—*Add.*
MSS. 36124, f. 1.

Our will and pleasure is that you forthwith cause our great seal of Great Britain to be affixed to four several instruments, bearing date with these presents, containing our commissions to George Bagwell, commander of the ship *Resolution*, burden four hundred and ninety five tons, and carrying thirty guns and ninety nine men, to William Jobson, commander of the ship *Royal George*, burthen four hundred and ninety tons, and carrying thirty guns and ninety eight men, to George Martin, commander of the ship *Princess Mary*, burden four hundred and eighty tons, and carrying thirty guns and ninety six men, and to George Pelly, commander of the ship *Prince of Wales*, burden four hundred and ninety five tons, and carrying ninety five men, and carrying thirty guns, authorising and empowering them or others the commanders of the said ships for the time being to apprehend, seize, or secure, all pyrates, freebooters, and sea rovers, together with their ship and vessels, goods and merchandizes, which they shall meet with in any of the ports or places, or upon any of the coasts or seas of India, or in any other seas whatsoever. And for so doing this shall be your warrant. Given

at our court at Hampton Court, the 22nd day of August 1737, in the eleventh year of our reign.

By his Majesty's command
HOLLES NEWCASTLE.

To our right trusty and well beloved councillor Philip Lord Hardwicke, our Chancellor of Great Britain.

1738. Newcastle to Geraldino,¹ justifying the issue of letters of reprisal against Spain.—*S.P. Foreign, Foreign Ministers &c* 59, 28th April.

I have laid before the king the memorial addressed to His Majesty, which you put into my hands, the 20th April (1st May) setting forth His Catholick Majesty's surprise at the offer of letters of reprisal which His Majesty has been pleased some time ago, to make to the English merchants; and endeavouring to shew that the said offer of letters of reprisal on the several cases mentioned in your memorial was contrary to the treaties subsisting between the two crowns; and desiring to know whether, in consideration of what you had offered by order of the king, your master, His Majesty would think proper to continue or revoke the offer of letters of reprisal above mentioned.

In answer to which I am commanded by the king to acquaint you that His Majesty cannot but be equally surprised at the endeavours used in your memorial to represent this proceeding

¹ Don Thomas Geraldino, Spanish minister in England. The letter was delivered in French.

to be contrary to the treaties subsisting between the two crowns, and particularly at the citing the very Articles of the treaties, which, in His Majesty's opinion, prove the justice and equity of what has been offered in this respect. The rule laid down for granting letters of reprisal by the third Article of the treaty of 1667 being: 'That if any further delay shall happen, and no satisfaction be given upon the intervention of six months after the instances made, then letters of reprisal, mark, or countermark may be given to the party aggrieved.' And the fourteenth Article of the treaty of 1670, which more immediately relates to the cases in the West Indies, expressly says: 'That no letters of reprisal shall be given, or any other proceedings of that nature had, except justice shall be denied or unreasonably delayed; in which case it shall be lawful for that King, whose subject has suffered the injury, to proceed in any manner according to the law of nations till reparation shall be given to the injured party;' And it is notorious that by the law of nations reprisals are allowed when justice shall have been denied, or unreasonably delayed. This being so, the king could have no doubt, and does accordingly insist, that His Majesty hath a right by the treaties and the law of nations to grant letters of reprisal for all such unjust seizures of ships and effects belonging to his subjects as were made by the Spaniards antecedent to the year 1737, for which repeated complaints have been long since duly made, and no restitution or satisfaction given thereupon.

As to the many notorious cases which happened in the last year, of which particular mention is made in your memorial, and upon which no complaint could be made till the months of

October and December last, His Majesty considering the unjust methods used in the trial and condemnation in the West Indies of ships and effects seized by the Spanish *garda costas*, of which complaint was made in the letter wrote by Mr Keene to M. de la Quadra on the 17th instant N.S. and which are proved to have been used in the trial and condemnation of the ship *Loyal Charles* by the affidavit of Benjamin Way, commander thereof, taken in due form, and already transmitted to your court, whereby His Majesty had reason to apprehend that his subjects were deprived of all means and opportunity of making their just defence, did at the time of making the offer of letters of reprisal above mentioned, reserve, and does still reserve for his further consideration and determination, How far such proceedings might be deemed to amount to a denial of justice, in the first instance, and in consequence thereof letters of reprisal may be warrantably granted, if proper application should be made to the king by the sufferers for them.

Having thus acquainted you with His Majesty's sentiments upon the subject of your memorial, and the reasons upon which they have been grounded, His Majesty is persuaded that, when you shall have informed the king, your master, of them, His Catholick Majesty's equity is such that he will be satisfied with the uprightness of His Majesty's intentions in these proceedings, and of His Majesty's desire, as in him lies, to preserve the general good correspondence and friendship between the two crowns.

1739. Warrant to affix the great seal to a commission to the governor of Gibraltar to grant letters of marque and reprisals. —*Add. MSS.* 36124, f. 19.

GEORGE R.

Our will and pleasure is that you forthwith cause Our Great Seal¹ of Great Britain to be affixed to a commission, bearing date with these presents, authorizing and empowering our trusty and well beloved Joseph Sabine, Esquire, Our Governor of Gibraltar, and the Governor for the time being, to grant letters of marque and reprisals to any of Our subjects that they shall think fitly qualified for seizing and taking the ships vessels and goods belonging to the King of Spain, or his subjects, and to bring the same in judgment in Our own High Court of Admiralty of England, or in any of Our Courts of Admiralty within Our dominions. And for so doing this shall be your warrant. Given at Our court at Kensington the 15th day of September 1739 in the 13th year of Our reign.

By His Majesty's command,
HARRINGTON.

To Our right trusty and well beloved councillor, Philip Lord Hardwicke, Our Chancellor of Great Britain.

¹ The seal is affixed. *Ibid.* f. 27 is a similar warrant for the Governor of Minorca.

1739. Warrant to affix the great seal to a commission authorising the lords of the Admiralty to require the judge to hear prize cases.—*Add. MSS.* 36124, f. 29.¹

GEORGE R.

Our will and pleasure is that you forthwith cause our great seal of Great Britain to be affixed to a commission, bearing date with these presents, authorizing and enjoyning our High Admiral of Great Britain and Ireland &c for the time being and our right trusty and well beloved councillor Sir Charles Wager Knight, our trusty and well beloved Sir Thomas Lyttelton Baronet, Sir Thomas Frankland Baronet, Thomas Clutterbuck Esquire, Harry Powlett Esquire, commonly called Lord Harry Powlett, John Campbell of Stack Pole Court in our County of Pembroke Esquire, and Vere Beauclerk Esquire, commonly called Lord Vere Beauclerk, our Commissioners for executing the office of our High Admiral of England and Ireland &c and our Commissioners for executing the said office for the time being, to will and require our High Court of Admiralty of England, and the Lieutenant and judge of our said Court and his surrogate, as also the several courts of Admiralty within our dominions to take cognizance of and judicially to proceed upon all and all manner of captures, seizures, prizes, and reprizals of all ships and goods already seized and taken and which hereafter shall be seized and taken, and to hear and determine the same, and according to the course of Admiralty and

¹ *Ibid.* f. 17, a similar warrant, 29th March 1744, against France. A seal is affixed to both.

laws of nations to adjudge and condemn all such ships, vessels, and goods, as shall belong to Spain or the vassals or subjects of the King of Spain, or to any other inhabiting within any of his countrys, territorys and dominions, and all such other ships vessels and goods as are or shall be liable to confiscation pursuant to the respective treatys between us and other Princes, States, and Potentates, And for so doing this shall be your warrant. Given at our court at St. James' the thirtieth day of November 1739, in the thirteenth year of our reign.

By his Majesty's command,

HARRINGTON.

To our right trusty and well beloved councillor, Philip Lord Hardwicke, Baron of Hardwicke, our Chancellor of Great Britain,

1740. Warrant to the governor of Jamaica to issue letters of marque.—*Adm. Sec. Out Letters* 1053, f. 559.¹

. . . These are therefore to impower you, Edward Trelawny, Esquire, Governor of Jamaica, and by these presents we do impower and appoint you, the said Edward Trelawny, esquire, to cause to be issued forth, pursuant to the said Act,² by warrant under your hand and the seal of the said island, directed to the judge of the Admiralty of the said island of Jamaica, commissions or letters of marque at the request of any British owner or owners of any ship or vessel to any

¹ Fifteen similar warrants issued to other governors in the West Indies and America.

² 13 Geo. II, c. 4.

person or persons whom such owner or owners shall nominate to be commander, or in case of death, successively commanders of such ship or vessel ; and to cause such bail and security to be taken as is directed by the said Act ; and moreover to cause that in granting such commissions or letters of marque, all other things be had and done conformable to and as the said Act requires. For which this shall be your warrant. Given under our hands and the seal of the office of Admiralty the 20th of May 1740.

[Signed by three of the lords.]

1740. Newcastle to Penrice ; a Portuguese ship to be released, and proceedings against her in the Admiralty court to be stayed.—*Adm. Ct. Prize Papers* 95.

Upon my laying before the King a letter from the envoy from Portugal, desiring that a Portuguese ship called the St. Ambrose, Francis Manuel de Lima master, which had been seized at Dover on pretext that her cargo belonged to Spaniards, might be discharged, his Majesty upon what is represented by the said envoy has been pleased to order that the said ship should be accordingly discharged and delivered, with her cargo, to the master, that he may reload his goods and proceed on his intended voyage ; with which I am commanded to acquaint you, and to signify to you his Majesty's pleasure that an entire stop should be put to all proceedings that have been commenced in his Majesty's high court of Admiralty against the said ship, or her cargo, and any orders that may have been given for their detention in

consequence of such proceedings immediately revoked.

1741. Paul to the Lords of the Admiralty, as to cloth and ships made by Sweden contraband, contrary to treaty. — *S.P. Dom. Naval* 24 (2), f. 456.

In obedience to your commands signified to me by Thomas Corbett Esquire, your Lordships' Secretary, referring me to a regulation made by the King of Sweden, to which his men of war, as well as private commissioned ships are to conform during the present war between that Kingdom and Muscovy, of which I have annexed the copy. It being your Lordships' direction that I should take the same into consideration, and report my opinion whether and how far the trade of His Majesty's subjects may be affected by the said Regulation, and what may be proper to be done thereupon. [*After reciting the treaties of 1654 and 1661 he proceeds:—*] I observe that by the seventh Article of the Regulations made the 28th of July 1741, sail cloath and what serves for cloathing of the enemy's army are mentioned as contraband, though neither of those are recited in the catalogue of contraband goods enumerated in the treaty, and therefore not to be deemed contraband from the treatys subsisting between His Majesty and the King of Sweden. By the eighth Article it is mentioned that all ships designed for sale for the use of the enemy may be taken and seized. This, I apprehend, is not to be warranted from the aforesaid treatys. I am of opinion that the woolen trade of Great Britain may be affected by the said seventh Regulation ;

and, in case any cloth should be seized as contraband, it must be claimed under the treatys made in 1654 and 1661. All which is submitted &c.

Doctors Commons,
3rd Sep. 1741.

G. PAUL.

1742. Spanish letter of marque; contemporary translation.—*Adm. Ct. Prize Papers* 118.

Don Philip de Bourbon, by the grace of God Infant of Spain, Knight of the Orders of the Golden Fleece, Holy Ghost, and St Jago, Great Prior of Castille and Leon of St John, Chief Commendary of Calatrava Castille and Aragon, High Admiral of all the maritime Forces of Spain and the Indies and Protector of the Commerce.

Whereas the King my Lord and Father, having declared war against the king and subjects of Great Britain upon good and just motions which are well known, His Majesty has resolved that the free born subjects of these Kingdoms, and others who shall solicit the same, be permitted to equip for cruising against that nation such vessels as they have or may fit out for this purpose. And, as it belongs to me by my office of High Admiral of all the maritime forces of Spain and the Indies, to dispatch Licences and Commissions conformable thereto, I have granted, as by vertue of the present Letters I grant, what is necessary to Dr. Juan del Muentte, inhabitant of the town of Portugalete, to arm as a cruiser against the English the Frigate called El Rayo de Jupiter, of the burthen of one hundred and fifty tons or thereabouts, with eighteen guns and ten swivel guns, and the arms and ammunition

proper thereto, and as far as the number of one hundred and sixty men, during the time that hostilities shall be continued on both sides to cruise in the said ship and carry the flag and the arms of Spain, to sail in the seas of Europe and Africa, (without touching on those of America without special permission), and to chase, attack, take, and seize, the ships and effects he shall meet with belonging to the king and subjects of Great Britain and other enemies of the Crown, with an express condition that in his cruising he shall follow the Orders and Royal Instructions relating thereto, and with his prizes shall sail (directly, if possible) to one of the Ports of His Majesty's Dominions ; For which he shall enter into proper security with the Officer from whom he shall receive this commission, and that an account of this Dispatch shall be taken in the offices which relate to the Port or place or equipment of the ship, where he shall leave a list, signed by him, containing the names, surnames, [and] country of Residence, of each of his crew. Wherefore I require and desire all Kings, Princes, Potentates, Lords, Republicks, and States, Friends and Allies of this Crown, to grant said Dr. Juan del Muentte, or the person whom he shall appoint to command, all favour and help, and to receive in their Ports the said ship, the crew, and whatever he may have acquired by the voyage, without permitting him to be in the least disturbed or embarrassed. And I order and command the Commandants General of Marines, Intendants and Officers thereof, General Officers, and others of the Royal Naval Armada and of the squadron of the galleys, Judges and Justices, and other persons under my jurisdiction, and such as are not, to suffer him to pass freely and securely

without any lett or hindrance, and to grant him all the favour and assistance and help he may want ; for which purpose I have ordered these present Letters to be dispatched, sealed with the seal of my Arms and signed by Don Joseph del Campillo, Commendary of the Olive in the order of St Jago, Governor of the Council of the Treasury and its tribunals, His Majesty's Secretary of State and of the Dispatch of the Negotiations of war, navy, the Indies, and Treasury, and Superintendent General of the Receipts and Payments thereof, my Lieutenant General. In Aranjuez . . . the twenty third of April, one thousand seven hundred and forty two.

JOSEPH DE CAMPILLO.

Don Phelipe de Borbon Por la Gracia de Dios Infante de España, Cavallero de las Ordenes del Toyson, Sancti Spiritus, y Santiago, Gran Prior de Castilla, y Leon en la de San Juan, Commendador Mayor de Calatrava, de Castilla, y Aragon, Almirante General de Todas Las Fuerzas Maritimas de España y de Las Indias, y Protector del Comercio.

Por Quanto habiendo El Rey mi Señor, y Padre declarado la Guerra al Rey y Subditos de la Gran Bretaña, por los justos y fundalos motivos que son notorios, tiene resuelto S. M. que se permita à los Naturales de estos Reynos, y à los demás, que lo solicitaren, armar en Corso contra aquella Nacion las Embarcaciones, que tengan, ò puedan tener à proposito para este destino ; y perteneciendome por mi Dignidad de Almirante General de todas las Fuerzas Maritimas de España, y de las Indias la expedicion de las Licencias y commisiones convenientes al expressado efecto, he concluido, como en virtud de las presentes Letras concedo, la correspondiente a Don Juan del Muentte vecino de la ville de Portugalete para armar en Corso contra Ingleses la fragata nombrada el Rayo de Jupiter de porte de ciento y cinquenta toneladas, poco mas, ò menos con Diez y ocho

cañones, y Diez Pedreros, y las demás Armas, y Municiones necessarias, y hasta en numero de ziento y sesenta Hombres de Tripulacion, à fin de que por el tiempo que duraren las hostilidades de una, y otra parte, pueda salir à corsear con la citada embarcacion, llevando en ella la Vandera de las Armas de España, correr los mares de Europa y Africa, (sin passer, ni tocar à los de America sin especial permiso), y pesseguir, atacar, tomar, y apresar los Navios, y efectos que encontrare propios del Rey, y Subditos de la Gran Bretaña, y de otros Enemigos de la Corona, con la condicion expressa de, que en el Corso, que assi hiciere, se arreglarà à lo que tocante à èl previenen las Ordenanzas, y Establecimientos Reales; de que con las presas, que executare, se encaminarà (directamente, si fuere possible), à uno de los Puertos de los Dominios de su Magestad; de que otorgarà la fianza necessaria à satisfaccion del Ministro, por cuya mano recibiere esta Commission; y de que se tomar à la razon de este Despacho en las Oficinas, à que corresponde el Puerto, ò parage donde se haga, ò convenga el Armamento, en las quales Reyes, Principes, Potentados, Señores, Republicas, y Estados, Amigos, y Aliados de esta Corona, concedan al referido Don Juan del Muentte ò el Cabo, que substituyere en el mando, todo favor, asistencia, y buen acogimiento en sus Puertos con la nominada Embarcacion, y Equipage, y todo lo que huviere adquirido durante su navegacion, sin ponerle, ni permittir se le ponga embarazo alguno: Y mando, y ordeno à los Commandantes Generales de los Departamentos de Marina, Intendentes, y Ministros de ellos, Oficiales Generales y Particulares de la Real Armada Navál, y de la Esquadra de Galeras, Juezes, y Justicias, y demás personas sujetas à mi Jurisdiccion; y à las que no lo son, encargo le dexe passar libre, y seguramente, sin causarle impedimento alguno, ni molestia, y le faciliten todo el favor, auxilio y ayuda que necessitare; a cuyo fin le he mandado despachar esta Letras, selladas con el Sello de mis Armas, y firmadas por Don Joseph del Campillo, Comendador de la Oliva en el Orden de Santiago, Governador del Corsejo de

Hacienda, y sus Tribunales, Secretario de Estado de S. M. y del Despacho de las Negociaciones de Guerra, Marina, Indias, y Hacienda, y Superintendente General del cobro, y distribucion de ella, Mi Lugartheniente General en Aranjuez à veinte y tres de Abrille de mil setecientos y quaranta y dos.

JOSEPH DEL CAMPILLO.

1743. Warrant to the Lords to make satisfaction for Dutch ships wrongfully seized, and to require the Admiralty Court to observe the treaty of 1674.—*S.P. Foreign, Foreign Ministers &c.* 27.¹

GEORGE R.

Right trusty and well beloved cousin and councillor, and trusty and well beloved, We greet you well. Whereas the Sieur Hop, envoy extraordinary from our good friends and allys the States General of the United Provinces, has made strong and repeated complaints to us, that since the commencement of the present war with Spain the captains and officers of our ships of war, and others acting under our commission have, without any regard to the terms of the treaty marine between our royal predecessor, King Charles the Second, and their high mightinesses the States General of the United Netherlands, concluded at London the 1st of December 1674 S.V., frequently made prise of Dutch ships and their cargoes, as well in Europe as in America, upon pretence of their having on board Spanish effects, though not contraband, and that our courts of Admiralty have in several instances

¹ In Boreel's letter of 22nd April 1762; a sealed copy; another is in *S.P. Dom. Naval* 26, f. 48.

condemned the said Dutch vessels and cargoes, in direct contradiction to the said treaty ; And it being our royal intention that all engagements which subsist between us and the said States General should be most carefully and religiously observed ; And We being besides desirous of shewing all possible marks of regard and friendship towards the subjects of our said good friends and allys ; It is therefore our will and pleasure that you should, as far as lyeth in your power, cause proper reparation and satisfaction to be given in all cases where you shall find the stipulations of the above mentioned treaty to have been violated by any of our subjects ; And our further will and pleasure is, and We do hereby authorize and require you to give directions to our several courts of Admiralty, where claims relating to such captures may come to be heard, to pay the strictest regard to what is stipulated in the said treaty marine, and other treatys subsisting between us and our said good friends and allys the States General. And so we heartily bid you farewell. Given at our court at St. James', the seventh day of April 1743, in the sixteenth year of our reign.

By His Majesty's command

CARTERET.

1743. Summary of instructions to commissioners appointed to distribute prize moneys arising from captures made from Spaniards before war was declared.—
P.C. Register 97, f. 579.

After reciting that between 10th July 1739, when an order for general reprisals issued, and 19th October,

when war was declared, many captures had been made by H.M. ship and privateers, and that by Order in Council of 18th June 1741 it was declared that the proceeds of prizes made between those dates should be divided equally, one half to those who had suffered by Spanish depredations and one half to the captors; and that the former half should be divided amongst those who had suffered by seizures made between 2nd June 1721 and 10th July 1739 by ships commissioned by the King of Spain, provided their claims had already made, or should be made before the commissioners within a certain date. The whole sum was to be distributed within two years; officers and seamen of H.M. ships to share as directed by proclamation of 19th June 1740 in pursuance of 13 Geo. II, c. 4.

[Dated 29 Sep. 1743.]

1748. Commission to the Lords to require the judge to try Genoese captures.—
Adm. Ct. Miscellanea 93.¹

George the Second, by the grace of God &c . . . To [the Lord Admiral and, naming them,] . . . our commissioners for executing the office of our Lord High Admiral of England and Ireland, . . . Greeting. Whereas the republick of Genoa did commit hostilities against us and our subjects, and did openly join and assist our declared enemies in violation of that neutrality which the said republick had often and solemnly promised to observe, and this after a memorial bearing date the tenth of November, one thousand seven hundred and forty four, delivered to the Doge and Senate by our command, declaring

¹ This, the original, has the great seal attached. Several others are in *Adm. Ct. Miscell.* 90 to 100. It should, in order of date, come in at p. 346.

that if the republick joined with or aided our enemies in any manner, we should look upon it as a declaration of war, and should treat the said republick and the subjects thereof as enemies, whereupon war ensued between us and the said republick. These are therefore to authorize, and We do hereby authorize and injoin you our High Admiral of Great Britain and Ireland and so forth for the time being and you our said commissioners for executing the office of our High Admiral of Great Britain and Ireland and so forth and the commissioners for executing the said office for the time being, and any three or more of you to will and require our High Court of Admiralty of England and the lieutenant and judge of the said courts and his surrogates, as also the several courts of Admiralty within our dominions, and they are hereby authorized and required to take cognizance of and judicially to proceed upon all and all manner of captures, seizures, prizes, and reprizalls of all ships and goods already seized and taken, and which hereafter shall be seized and taken from the said Republick of Genoa and to hear and determine the same, and according to the course of Admiralty and laws of nations adjudge and condemn all such ships, vessells, and goods as shall belong to the said Republick of Genoa or the vassals and subjects belonging thereto or to any other inhabiting within any of the countries territories and dominions of the said Republick, and all such other ships, vessels, and goods as are or shall be liable to confiscation pursuant to the respective treaties between Us and other Princes, States, and Potentates. In witness &c (*Dated 19 Feb. 1748*).

1744. Proclamation as to the distribution of prize, and particularly as to the observance of contracts made thereon between owners and crews of privateers.—*P.C. Register* 98, f. 276.

After reciting that the King had granted to captors, being ships of the Royal Navy, the whole of their prizes, and declaring the shares to be taken by officers and crew, the proclamation proceeds:

. . . And whereas we have impowered the Lords Commissioners of the Admiralty to grant letters of marque or commissions for privateers to such persons as they shall think fitly qualified in that behalf, according to the treaties between us and our allies ; We do for encouragement of such privateers further declare, That all prizes taken by any privateer brought into port according to our Instructions in that behalf shall, unless otherwise decreed by the court of Admiralty, be continued in the possession of the privateer, having only Custom House officers on board, as is usual in merchant ships, to secure the dutys. And such ship, vessel, and goods, being condemned as lawful prize and duly inventoried and appraised by such persons as shall be lawfully authorized in that behalf, the same shall be delivered to, or remain with, the captor thereof, or such persons as are intrusted therein, to be disposed of by him or them as he or they shall think fit, they first satisfying, paying, or securing to us such customs and duties as aforesaid. And in regard [that] privateers are set forth and manned at the charges of the particular owners thereof, who make agreements with their seamen

what shares and proportions each man on board such privateer shall have of any prize which shall be taken, and it will not be reasonable that any seaman or person on board such privateers should be intitled to anything otherwise than according to the particular agreements he shall have signed to such owner or owners, We do hereby ratify and confirm all and every such contracts and agreements which shall be entered into upon the putting forth any such privateer, And we do hereby declare that every Article and thing which shall be contained in such contract, stipulations, and agreements relating to the distribution of such prizes amongst themselves shall be as firm, valid, and effectual, as if they had been set forth in this Declaration. . . .

The proclamation goes on to provide that notice is to be given in the London Gazette of shares left unclaimed in the hands of the prize agent, which after three years are to be paid to Greenwich Hospital; and for other notices to be given, as to times of payment of shares and names of agents. For the most part it follows the language of 13 Geo. II, c. 4.

1744. Penrice to Corbett,¹ as to issuing blank commissions for Dutch ships as privateers under English colours. — *Adm. Sec. In Letters* 3878, 12 Ap. 1744.

I have received the honour of your letter, with the copy inclosed of a letter of Lord Carteret, together with an extract from a letter his Lord-

¹ Secretary to the Admiralty. Notwithstanding the opinion here expressed by Penrice, blank commissions were issued by Frederick the Great to be distributed in England by his minister in London.

ship received from Mr. Trevor, his Majesty's minister to the States General, in relation to his having blank commissions sent to him to issue out to Dutch ships, to act as privateers under English colours ; and being desired by the Lords Commissioners of the Admiralty to inform them if it has been usually done in time of war, and if so the best way of doing it.

I do most humbly report to their Lordships, that I have searched the Registrar's office, with what diligence I could in this short space of time, and do not find that any blank commissions have issued under the great seal of the Admiralty to any of his Majesty's ministers residing in foreign courts or states ; and, finding no precedent, I do most humbly conceive that the issuing blank commissions, to be sent to Mr. Trevor, for Dutch ships to act as privateers under English colours, would be irregular and illegal. For I do not conceive that Mr. Trevor can take bail with sureties, as required by the king's instructions, in the dominions of a foreign state, that being a judicial act, and expressly required by his Majesty's instructions to be taken before the king's lieutenant and judge of his court of Admiralty of England, or his surrogate. For, in case the bail taken by Mr. Trevor should be forfeited by the actions of captains of the privateers contrary to the King's instructions, which bail is to be taken in the sum of fifteen hundred or three thousand pounds, (according to the number of men), and to the effect and form declared in the King's instructions, I do not conceive that execution can issue forth against the bail, their heirs', executors', and administrators' goods and chattels, if the same are found out of his Majesty's dominions, and therefore such bail would be totally ineffectual, . . .

[He goes on to state the ancient course of the Admiralty as to the issue of letters of marque and continues:] . . . I find in the year 1719 there was some application made by Mr. Secretary Craggs for delivering out blank letters of marque to Mr. Daniel Wolters, his Majesty's agent at Rotterdam, and to Mr. John Fleetwood, his Majesty's consul at Naples, and to Mr. George Henshaw, his Majesty's consul at Genoa, but upon full consideration had of the matter and of his Majesty's commission for granting letters of marque and of his Majesty's instructions under his sign manual, no further proceedings were had.

I therefore humbly conceive that the merchants in Holland may by their agents here apply themselves to my Lords commissioners of Admiralty, and set forth or declare the name of the ship and the commander, and the burthen, and the number of guns and men, that they design to set forth in warlike manner as a private man of war, upon which their Lordships may grant them a warrant in the usual form to the judge of the Admiralty to issue such a commission as is directed by his Majesty's instructions, and hath been used in such cases, and this seems to be agreeable to what is mentioned in the extract of Mr. Trevor's letter.

This is most humbly submitted to their Lordships' consideration.

[Signed] H. PENRICE.

Doctors Commons,
Apr. 12, 1744.

religiously observed ; It is therefore our will and pleasure, and we do hereby authorise and empower you to enjoin all captains of our ships of war, and captains of other ships, to whom you shall grant letters of marque or commissions for private men of war, against the king of Spain and the French king and their subjects, to observe carefully and religiously the said treaty marine ; and the latter to give security pursuant to the tenth article, for the due performance thereof ; And our farther will and pleasure is, and we do hereby authorise and require you to give directions to our several courts of Admiralty, where claims relating to such captures may come to be heard, to pay the strictest regard to what is stipulated in the said treaty marine, and other treaties subsisting between us and our said good friends and allies, the States General. And so we bid you heartily farewell. Given at our Court at St James's the 30th day of April 1744, the seventeenth year of our reign.¹

By his Majesty's command,

CARTERET.

[*Addressed to the Lords of the Admiralty.*]

1744. Warrant to issue letters of marque for the Endeavour. — *Adm. Sec. In Letters* 3878, 30 June.²

By the commissioners for executing the office of Lord High Admiral of Great Britain and Ireland &c.

¹ Cf. *supra*, p. 266, and *infra*, pp. 425, 429 ; and for the consequent orders to H.M. officers and to the Admiralty Courts, see *S.P. Dom. Naval* 29, f. 397.

² In print. The issue of this letter of marque was afterwards stopped.

Whereas by his Majesty's commission under the great seal of Great Britain, bearing date the eighteenth day of June 1744, We are required and authorized to issue forth and grant commissions to any of his Majesty's subjects, or others, whom we shall deem fitly qualified in that behalf, for apprehending, seizing, and taking the ships, vessels, and goods, belonging to France and Spain, or the vassals and subjects of the French King, or King of Spain, or others inhabiting within any of their, or either of their, countries, territories, and dominions, and such other ships, vessels, and goods, as are or shall be liable to confiscation pursuant to the respective treaties between his Majesty and other princes, states, and potentates, and to bring the same to judgment in his Majesty's high court of Admiralty of England, or such other court of Admiralty as shall be lawfully authorized in that behalf, for proceedings and adjudication and condemnation to be thereupon had, according to the course of Admiralty and laws of nations, with other powers in the said commission expressed ; a copy whereof, together with his Majesty's instructions under his royal signet and sign manual remains with you ; These are therefore to will and require you forthwith to cause a letter of marque to be issued out of the high court of Admiralty unto Captain Samuel Betts, commander of the ship called the Endeavour sloop, burthen about seventy tons, mounted with four carriage and twenty swivel guns, and navigated with seventy men, to set forth in warlike manner the said ship called the Endeavour sloop, whereof Samuel Betts is commander, to apprehend, seize, and take, the ships vessels, and goods, belonging to France and Spain, or the vassals and subjects of the French King or King of Spain, or others inhabiting

within any of their or either of their countries, territories, and dominions, and such other ships, vessels, and goods, as are or shall be liable to confiscation pursuant to the respective treaties between his Majesty and other princes, states, and potentates, according to his Majesty's commission and instructions aforesaid. And you are to insert therein a clause enjoining the said Samuel Betts to keep an exact journal of his proceedings, and therein particularly to take notice of all prizes which shall be taken by him, the nature of such prizes, the time and place of their being taken, and the value of them, as near as he can judge; as also the station, motion, and strength, of the enemy, as well as he can discover by the best intelligence he can get; of which he is from time to time, as he shall have opportunity, to transmit an account to our Secretary, and to keep correspondence with him by all opportunities that shall present. Provided always that before you issue such commission, security be given thereupon, according as is directed by his Majesty's instructions aforementioned, and hath been used in such cases; the said commission to continue in force until further order; for which this shall be your warrant. Given under our hands, and the seal of the office of Admiralty, this 27 day of June 1744.

GEO. LEE, C. HARDY, JNO. PHILLIPSON.

To Sir Henry Penrice, Knight,
Judge of the high court of Admiralty.

1744. Opinion of the law officers and civilians as to the power of the crown to distribute prizes between Dutch and English joint captors.—*Add. MSS.* 35898, f. 137.

It had been proposed that the King should issue a proclamation declaring that the joint captors should share in the same way as the officers and seamen of the fleet. Doubts had arisen as to the propriety of this course, in view of the recent prize Act 13 Geo. II, c. 4.¹ After stating this, the report proceeds :

... We have considered the matters so referred to us, and we are humbly of opinion that, as the Act of Parliament relates only to ships of war in your Majesty's pay and privateers acting under your Majesty's commission, the method proposed of issuing a proclamation for granting a share in the prizes taken by your Majesty's and the Dutch ships is not advisable. But we humbly apprehend that by the law of nations the Dutch may claim a share of the prizes taken jointly by them and your Majesty's ships in proportion to the aid and assistance given by them in the capture. And we are humbly of opinion that this general claim of theirs may be established, and rules for fixing the proportion may be ascertained by a treaty between your Majesty and the States General, notwithstanding the said Act of Parliament ; and that the officers and mariners aboard the said Dutch ships so aiding and assisting in such captures will be intitled to the share allotted to the Dutch in such manner and proportion as the States General shall think fit to appoint.

We are also humbly of opinion that, if the

¹ The Order for the report is in *P.C. Register* 98, f. 447.

Dutch ships of war should take letters of marque, they would then be entitled, as acting under your Majesty's commission, according to the Act of Parliament, to all prizes taken by them singly, and to a share of all prizes taken by your Majesty's ships and them jointly.

All which is most humbly submitted to your Majesty's royal wisdom.

Aug. 4, 1744.

G. PAUL, D. RYDER,
W. MURRAY, W. STRAHAN.

1744. Penrice to Corbett; as to contraband and other goods in Hamburg ships.—
Adm. Sec. In Letters 3878, 18th Aug.

Yesterday by the post I received your letter of the 9th of this instant, with a translation of an extract from the Registry of the Senate of Hamburgh, of Fryday 31 July N.S. 1744, sent to the Lords Commissioners of the Admiralty by Lord Carteret; and it being their Lordships' direction that I should inform them whether any proceedings have been had against the ship and cargo mentioned in the said extract, in the Admiralty court, and what I know of the case, I do most humbly report:—That the ship *Franciscus*, Christian Lorenzen master, was seized as prize off Beachy Head, on the coast of Sussex, by the Dover privateer, Captain James Gravener commander, and carried into Dover; that the examinations of the master, the mate, the boat-swain, a passenger on board, and a boy of seventeen, have been taken in preparatory upon standing interrogatories; from whence among other things it appears that the ship belonged

to Hamburgh ; that she came last from Santa Cruz and Oratava, in the island of Teneriff, with a lading of wine, silver, and other commodities of that country, bound, as some of the witnesses say, to Dunckerk, and was therefore seized and brought in as prize, as coming from an enemies' port, and going to an enemies' port, and having enemies' goods on board.

There are claims given in for the ship as belonging to Joachim Kahler and Joachim Keusch, burghers of the city of Hamburgh, and likewise claims for severall parcells of goods as belonging to merchants of the city of Hamburgh.

The master of the ship at the time of seizure produced several ship's papers, which he delivered up to the captor, and swears upon his examination that they were all the papers he had ; whereas after he had delivered his papers, upon a further search, a discovery was made of some papers concealed under a cask of wine, and another discovery was made of more papers concealed in the buoy of an anchor, tending, as is suggested by the captors, to the discovery of goods being enemies' property, the designation of the voyage being to Dunkirk ; the contents of which I cannot at present report, they not being yet translated from the originals, in order to be laid before the court.

The advocates for the captors insisted that by an Order in Council of 1664 the concealment of papers was a sufficient cause to confiscate the ship and cargo. The claimers prayed their claims to be admitted, and ship and goods restored, as belonging to Hamburghers, and being upon a lawfull trade, and having no contraband goods on board.

The papers not being translated and laid

before the court in due form, nor advocates for the captors and claimers fully instructed in the case, by the consent of the parties concerned on both sides, I reserved the further hearing of the admission of the claims to the 6th of September, but condemned the goods on board the *Franciscus*, for which there were no claims as enemies' goods and liable to confiscation, for these reasons : Because the goods not claimed consisted of wines and other goods taken on board at Oratava and the Canaries, and were the produce of Spanish dominions ; that there being no claim, the presumption was very strong that they were the effects of enemies, as they came from an enemies' port. It was very strongly insisted upon that it appeared by the preparatory examinations that the ship was designed for Dunkirk, (an enemies' port), and the suspicion very well founded by the concealment of the papers under a cask of wine and in the buoy of the anchor, which were found upon search, after the master had declared upon examination that he had delivered up all his ship's papers. That by the laws of nations enemies' goods found on board neutral ships, (though not contraband), may be seized as good and lawfull prize, where there is no express treaty to the contrary. That there is not any express treaty between the crown of Great Britain and town of Hamburgh stipulating that they shall have the liberty of carrying enemies' goods in Hamburgh ships, or at least no such convention or treaty is come to my knowledge. That it is expressly stipulated by the treaty of 1674 between the crown of Great Britain and the States General that free ships shall make free goods, and is a priviledge introduced by a special treaty contrary to the law

of nations. For I humbly conceive that an ally or neuter nation ought not to protect an enemy to the prejudice of the other ally. Consequently, if Hamburgh ships should be permitted to carry enemies' goods from one enemies' port to another port, our enemies may lay up their own ships, and trade with safety in neutral bottoms.

I do allow that notwithstanding the crown of Great Britain is at war both with France and Spain, neutral nations ought to enjoy the benefitts granted to them by treaties, and that they may have certain exemptions according to the tenour of the treaties concluded with the neutral powers ; but I do not conceive that the marine treaty of the year 1674 made between Great Britain and the States General, containing several regulations in respect to trade, can be extended to the town of Hamburgh, without an express treaty or convention for that purpose. And where no such special treaty is subsisting, the laws of nations are the general rules to govern neutral powers.

The assurances mentioned to have been given by Lord Harrington to the Senate of Hamburgh in December 1739 have not been communicated to me ; therefore I do humbly conceive that they do not at present come under my consideration.

I shall always endeavour, according to the best of my knowledge, punctually to observe the treaties and conventions subsisting between the crown of Great Britain and other neutral powers, in all matters which come before me in his Majesty's high court of Admiralty, and such further regulations and instructions as I shall from time to time receive, and am not at present conscious to myself of having done anything in his Majesty's high court of Admiralty

to occasion any just complaints from the honourable Senate of Hamburgh.

You will be pleased to lay this before my Lords Commissioners of the Admiralty.

[Signed] H. PENRICE.

1744. French prize regulations.—*S.P. Dom. Naval* 34, f. 265.¹

1. His Majesty forbids the French privateers to stop at sea, and bring into the ports of this kingdom the ships belonging to the subjects of neutral Princes, come from ports of their dominions, and freighted for the account of the subjects of the said neutral Princes with goods of the growth or manufacture of their country, to be carried to any country whatsoever, even to those His Majesty is at war [with], provided always there is no contraband on board the said ships.

2. Forbids them also to stop vessels belonging to the subjects of neutral Princes come from any country whatsoever, even from those with whom His Majesty is at war, and freighted for the account of the said subjects of neutral Princes with goods taken up in the country or state from whence they sailed, in order to return directly to one of the ports of the dominions of their sovereign.

3. Forbids them likewise to stop the ships belonging to the subjects of neutral Princes sailing from the ports of a neutral state, or one in alliance with His Majesty, provided they be not freighted with goods of the growth and manufacture of his enemies, in which case the goods shall be deemed a good prize, and the ships shall be released.

¹ Contained in a letter of 14th May 1750 from the Lords to Bedford.

4. His Majesty in like manner forbids the said privateers to stop the ships belonging to the subjects of the said neutral Princes bound from the ports of a state in alliance with His Majesty, or a neutral one, to the port of a state in enmity with His Majesty provided that there be no contraband goods, nor any of the growth and manufacture of His Majesty's enemies, on board such ship or ships ; in which cases the said goods will be deemed a lawful prize, and the ships shall be released.

5. If, in the cases explained by the 1st, 2nd, 3rd and 4th Articles of this regulation, there shall be found in the said neutral ships, of whatsoever nation they may be, merchandize or effects belonging to His Majesty's enemies, the said merchandize or effects shall be a good prize, even though they be not of the manufacture of the enemies' country ; but the ships shall be released.

6. His Majesty wills that all vessels taken, of whatsoever nation they be, whether enemies', neuter, or allies', out of which it shall be proved that there were papers thrown into the sea, shall be declared legal prizes, with their cargoes, upon the bare proof of the papers thrown overboard, and without any need to enquire into what those papers were, by whom they were thrown into the sea, nor whether there are enough left on board to evince the ship and cargo belong to friends and allies.

7. No regard will be paid to the passport of neutral Princes, when those who obtained them shall be found acting contrary thereto ; and the ships sailing with such passports shall be declared good prizes.

8. A passport or congé shall serve but for one voyage only, and be considered as null if

it be proved that the ship for which it was granted was not, when it was taken out, in any of the ports of the Prince that granted it.

9. All bills of lading found on board unsigned shall be null, and looked upon as documents void of form.

10. Every ship built in an enemy's country, or that has been the property of an enemy, cannot be deemed neutral nor allied, unless there can be found on board some authentick pieces passed before the public officers, who may vouch for the date thereof, shewing that the sale or cession of such ship was made to some one of the subjects of the neutral or allied Powers before the declaration of war, and unless the said transferring act of property from the enemy to the neutral or allied subject has been duly registered before the principal officer of the place of departure, and backed by an authentick power, given by the owner, in case the said last sale was not made by himself in person as for the ships built in an enemy's country that may have been taken by our ships, those of our allies, and of our subjects during the present war, and afterwards sold to the subjects of the allied or neutral state, they shall not be deemed legal prize, if there be found on board Acts in due form, drawn up by public officers appointed for this purpose, proving as well the taking as the sale or adjudication afterwards made thereof to the subjects of the said allied or neutral states, whether in France or in the ports of our allies; for want of which proofs, both of the taking and the sale of such ships they shall be deemed good prizes, and in no case the pieces which may be produced afterwards shall be credited, nor be of any service either to the owners of the said ship, or to the proprietors

of the goods that may have been put on board them.

11. No regard will be paid to the passports granted by neutral or allied Princes, whether to the owners or masters of ships, subjects of states at war with His Majesty, unless they have been naturalized, and have removed their domicile into the dominions of the said Princes before the declaration of the present war, neither shall the said owners or masters of ships, or subjects of enemies' countries, who may have obtained such letters of naturalization, enjoy the benefit thereof, if, since they obtained them, they went back into the States, enemies to His Majesty, in order to continue their commerce there.

12. All foreign ships on board of which there shall be a supercargo, merchant, clerk, or sea officer of a country at war with His Majesty, or whose crew shall consist of above one third sailors, subjects of the States, enemies to His Majesty, or who shall not have on board the muster roll of the crew, signed by the publick officers of the neutral places from which the ships sailed, shall be lawfull prizes.

13. Not that we mean to include in the disposition of the foregoing Article the ships whose captains or masters prove by acts found on board that they have been obliged to take on board sea officers or sailors in the ports where they put into, in order to replace those of the neutral country that died in the voyage.

14. The ships belonging to the king of Denmark's subjects, and those belonging to the subjects of the States General of the United Provinces may sail freely during the present war, either from their ports to the ports of other states, whether neutral or enemies, or from a

neutral port to an enemies' port, provided that it be not a place blocked up ; and in these two last cases they be not freighted either in whole or in part with goods reputed contraband by treaties, and this notwithstanding what is expressed in the four first Articles of the present regulation, of which nevertheless the 6th, 7th, 8th, 9th, 10th, 11th, and 12th articles shall be executed with respect to them ; and in case they be found freighted in whole or in part with the said contraband goods going to an enemies' port, whether they sailed from another port belonging to an enemy, or from a neutral port, the said goods shall be legal prize ; but neither the ships nor the remainder of the cargo, nor their effects, shall be detained on that account, though they should even belong to the enemy.

15. The same conduct shall be observed in regard to the ships belonging to the subjects of the king of Sweden, and those belonging to the inhabitants of the Hanse towns, in which nevertheless all the merchandize without distinction belonging to the enemy, though it should not be contraband, shall be a good prize, neither the ships nor the rest of the cargo, nor other effects shall be detained.

Done at camp before Friburg, Atc. 21st 1744.

(Signed) LOUIS
(and underneath) PHILLIPPEAUX.

1745. Report of Dr Paul as to the right of Algerines to sell their prizes at Gibraltar.
—*S.P. Dom. Naval* 28, f. 141.

In humble obedience to your Majesty's commands signified to me by his Grace the Duke of

Newcastle, your Majesty's Principal Secretary of State, referring to me a letter from Mr. Cope, your Majesty's minister at Hamburgh, and also a memorial of the Senate of that city, complaining that the Governor of Gibraltar had suffered the Algerines to dispose of a ship and cargo there, belonging to merchants of Hamburgh, which was taken in November last coming from Malaga in Spain, bound to Hamburgh. The same was sold for 20,000 pieces of eight. The memorial also sets forth the great profit arising to those corsars by being allowed to sell their ships at Gibraltar, because they can get better prices there than at Algiers; and desires that orders may be given that their ships, which may be taken by the Algerines, or any other States on the coast of Barbary, may not be admitted into Gibraltar, or any other of your Majesty's harbours, or at least not suffered to be sold there. [*After reciting the renewal in 1716 of the treaty of 1686, the addition in 1700 and 1703 of certain Articles, and Arts. 1 and 3 of 1868, and Art. 1 of 1716, providing for free intercourse and friendship between Algiers and Great Britain, he sets out Art. 10 of 1686 as follows:—*]

“If any ship of war of the King of Great Britain do come to Algiers, or to any other port or place of that kingdom, with any prize, they may freely sell it, or otherwise dispose of it, at their own pleasure, and not be obliged to pay customs of any sort; and that if they want provisions, victuals, or any other things, they may freely buy them at the rates of the market.”

Under these Articles of subsisting treatys, the Algerines seem to have a right, and may claim the privilege, as a neuter State, to come in your Majesty's ports; and in case the ships of war

belonging to your Majesty may freely sell their prizes in any port of Algiers, by the same rule I most humbly conceive the Algerines may dispose of their captures in your Majesty's port of Gibraltar. If your Majesty should condescend to inhibit the Algerines from any trade at Gibraltar, will not such an act occasion the like treatment towards your Majesty's subjects ?

All which is submitted &c.

Doctors Commons,
March 26, 1745.

G. PAUL.

1745. Penrice to Corbett, asking that the Lords should declare whether pitch and tar, being Swedish property in Swedish ships, are contraband.—*S.P. Dom. Naval* 28, f. 248.¹

I find by your letter of the 9th of this instant that Mr. Pingwicht, minister from the King of Sweden, has complained to the Earl of Harrington, Secretary of State, that two Swedish ships, the one called the *Castor*, Captain Anderson, and the other called the *St. Nicholas*, Captain Isberg, both of Gottenburgh, bound to Dunkirk and Brest, have been seized by the Swift privateer, Captain George Hudson, and carried to Dover, and thence to Sandwich, contrary to the treaties subsisting between the two nations.

According to their Lordships' desire I acquaint them that the papers in those two cases are very

¹ Also *Adm. Sec. In Letters* 3879, 11th May. See also his letter of 4th March, and a letter of the Lords to Harrington of 16th Dec. pointing out the conflict between the Instructions and the treaty; *ibid.*

lately brought in, and are now translating and copying, so that I have not yet perused them, but am informed that their cargoes are pitch and tar.

There shall be no delays in the proceedings, and care shall be taken that justice be done according to the treaties subsisting between the two crowns, and the fifth Article of His Majesty's Instructions to privateers, dated the 18th June 1744, in which pitch and tar laden in Swedish ships, and bound to the enemy's country are accounted contraband goods ; and by the second Article of the Instructions all ships carrying contraband goods to France or Spain are to be seized as prize to His Majesty.

In my report to their Lordships, of the 4th of March last, upon the ship *Med Guds Hielp*, John Soderberg master, I observed to their Lordships, that in the eleventh Article of the treaty with Sweden, 1661, pitch and tar are not enumerated among the contraband goods therein specified, and that it was agreed by that Article that it shall be lawfull for either of the confederates, his people or subjects, to trade with the enemies of the other, and to carry them any merchandize whatsoever not above excepted, without any impediment, provided they are not carried to those ports or places as are besieged by the other.

No treaty marine with Sweden since that of 1661 has come to my knowledge ; but by the fifth Article of the King's Instructions to privateers of the 18th of June 1744 it may be presumed that some convention has been since made, which may vary from the treaty abovementioned, both as to the formulary of the pass, and likewise as to contraband goods ; but no such Act of State has been sent down to me.

I have in part heard the cause of the Met Guds Hielp, but have not yet given any sentence in it, hoping that their Lordships, in their great wisdom, will be pleased to add some further explanation, by declaring :

Whether pitch and tar, being Swedish property and laden on board Swedish ships, consigned to an enemies' port shall be accounted contraband goods ?

Whether it shall be punctually required of every Swedish ship, that is bound to an enemies' port, that she shall be furnished with passports and certificates such as are inserted in the 12th Article verbatim, signed and subscribed by the chief magistrate of that province and city, or by the chief commissioner of the customs and duties, and specifying the true names of the ships, carriages [*sic*], goods, and masters of the vessels, together with the exact dates, without any fraud or collusion, together with such other descriptions of that sort as are expressed in the following form of a safe conduct and certificate ?

Note, the Latin form of the passport is part of the 12th Article.

Note, the passports and certificates on board Swedish ships taken and brought in as prize have not lately been according to this form.

As treaties between [*sic*] foreign states, and the Instructions to his Majesty's men of war and privateers are matters of state, they may vary according to circumstances. This is therefore most humbly submitted to their lordships by &c.

[*Dated 11th May 1745.*]

1745. Order of the Lords to captains of H.M. ships to seize naval stores in neutral ships bound to an enemy port. *S.P. Dom. Naval* 30, f. 274.

Whereas great numbers of ships of neutral nations do daily pass the seas, laden with naval stores, which they carry to ports of France and Spain; by which means His Majesty's enemies are greatly enabled and encouraged to fit out and arm privatiers, to destroy the trade of His Majesty's subjects, and also the French and Spaniards are supplied with materials to build and fit out ships of war, in order to annoy and invade His Majesty's dominions, and support his rebellious subjects and involve these kingdoms in a civil war; We do, in consideration of the mischiefs and dangers aforesaid, hereby require and direct you to visit all ships of neutral nations that you shall meet with, and to examine strictly their bills of lading and other ship papers; and if you shall find thereby, or by further examination, that they are laden with naval stores, and bound to the port of an enemy, you are to seize them, and bring or send them under the care of a discreet officer into one of His Majesty's ports, taking care that their hatches be spiked up and their lading and furniture secured from any damage and embezzlement.

You are, when any such ships are brought into port, to send us a particular account thereof, and of their ladings, and to what nation belonging, that such measures may be taken with the said ships as shall be thought proper.

[Dated 15th Oct. 1745.]

1746. The Lords to Corbett ; naval stores, though bound to an enemy port, are not to be seized, unless they are suitable for ships of war ; such stores may be sold to the King, and the ship will be discharged.—*S.P. Dom. Naval* 54, 22nd March.

Notwithstanding the order you lately received from us to direct the commanders of His Majesty's ships and vessels under your command to examine all ships of neutral nations, that they should meet with at sea, and to seize and bring into port all such as they should find laden with naval stores and bound to the port of an enemy, we do hereby require and direct you to give further orders to the said commanders not to stop any of the aforesaid kind of vessels but such only as are laden with large masts, yards, anchors, and cables, of a size to be used on board ships of war.

You are to give the said captains to understand that it is not intended to make such ships prizes, unless in cases where by treaty the goods are declared contraband ; but only to prevent the enemy from being supplied with large naval stores, whereby they are enabled to fit out ships of war and privateers, to ruin our commerce and furnish assistance to His Majesty's rebellious subjects, and even to threaten His Majesty's dominions with an invasion. But the masters of the said ships are to have liberty to sell the said stores to His Majesty, and then to be permitted to proceed to sea. Given under our hands the 22nd of March 1745.

BEDFORD, VERE BEAUCLERK, GEO. ANSON.

1746. Judge of the Minorca Vice Admiralty Court, to the Lords; he will follow their orders in condemning ships.—*S.P. Dom. Naval* 31, f. 12.

. . . If their Lordships think proper that the goods which really or truley belong to the French, declared enemies to His Majesty, and are found on board Dutch ships, should be returned and delivered by virtue and in consequence of the Marine Treaty, I am ready and willing to obey their orders thereupon. . . .

. . . In case His Majesty's intention should be that goods of the enemies found on board of Dutch ships should not be seized and condemned, I am willing to conform myself thereto, and to admit no claim thereupon for the future.¹ . . .

1746. Opinion of law officers, as to the bringing in of neutral ships with corn and provisions for the enemy on board, and the compulsory purchase of their cargoes by the government.—*Adm. Sec. In Letters* 3891.

The following opinion of Sir Dudley Ryder and Mr. Murray, dated 10th May 1746, is contained in a letter, dated 23rd June 1795, from the solicitor to (apparently)

¹ A sentence condemning goods on board the Enchuysen accompanies this letter. The goods included copper and other stores; they were destined for Toulon, and were found to be French property. As to the 'independence' of the judges at this date, cf. the Lords to Harrington, 25th Nov. 1745, 'If it shall appear that Captain Young took her (the Peace) wrongly, or that the judge, who condemned her, has gone against treaties we shall represent the same to His Majesty in order to receive his pleasure for their punishment;' *S.P. Dom. Naval* 29 (2).

the Secretary to the Admiralty. The legal position was, in 1795, different from that existing in 1746. In the interval the Navigation Act, which made the difficulty in 1746, had been repealed, and the Prize Act of George III had authorized the purchase of naval stores in foreign ships, and corn and provisions had, under that and previous Prize Acts, been dealt with as naval stores, though not, in the writer's opinion, seizable as contraband by the law of nations. The letter contains an interesting account of the steps taken in the past by the English Admiralty to prevent corn and provisions falling into the enemy's hands. The point really in dispute, however, seems to have been one of fees due to the Admiralty advocate, as much as one of international law.

Considering the Act of Navigation, which expressly prohibits, on the penalty of forfeiture of ship and cargo, the importation of these things in foreign ships other than of the country of their growth, we are doubtful whether what is proposed can be legally done, as the law now stands. But if the service of Government requires it, we think the safest and best method of doing it will be to purchase these naval stores, before they are landed, for his Majesty's use; and then to enter and land them as the King's property, and dismiss the ships as soon as possible.

1746. Recall of an order of the Lords directing the seizure of Dutch vessels with provisions on board for the French West Indies.—*S.P. Dom. Naval* 31, f. 137.¹

Whereas upon information that the island of Martinico, and other French islands, were reduced

¹ At f. 139 is a further order on this matter, proposed by the Lords.

to great distress for want of provisions, having very little but what they were supplied with by the Dutch, Danes, and other neutral ships, and if they were prevented from receiving supplies that way, they would be reduced to the greatest extremities, we directed you by our order of the 14th of March 1744, in consideration that the said islands might in some sort be said to be invested, and in the condition of a place besieged by our ships of war and privatiers, which were continually cruising about them, to give orders to the captains of His Majesty's ships and vessels under your command, if they should meet with any neutral ships laden with provisions for the supply of those islands, to seize and bring them into port, in order to their being proceeded against in the Admiralty court ; and though the said ships should be there acquitted, nevertheless not to suffer them to proceed with their loadings of provisions to sea, or any other ship to go out of the ports of His Majesty's islands with provisions for the enemy, leaving a liberty however to the commander of such neutral ships to dispose of their provisions to His Majesty's subjects, and then to go to sea ; And whereas the States General have made loud complaints against the said proceeding, and as so large a part of His Majesty's squadron is since sailed off from that station to Cape Breton, so that the motive and justification of the detention of neutral ships sailing towards the said islands, which arose from the supposition of their being invested by a squadron of His Majesty's ships, does not appear at present to subsist ; We do hereby in pursuance of His Majesty's pleasure revoke the said order to you of the 14th of March 1744, and require and direct you not to stop

or molest Dutch ships in the circumstances aforementioned, untill further order.

You are to order all the captains of His Majesty's ships under your command to have exact regard to the Marine Treaty with Holland of 1674, and not to molest any Dutch ships conforming themselves to the said treaty; And you are to let the said captains know that His Majesty is determined to punish in an exemplary manner all officers who shall act in disobedience thereto.

1746. Corbett to Winnington,¹ as to the impracticability of the scheme for the purchase by the government of naval stores in Dutch ships.—*Adm. Sec. Out Letters* 1054, f. 460.

I am commanded by my Lords Commissioners of the Admiralty to send you herewith a copy of a letter I lately wrote, by their Lordships' order, to the Secretary of the Treasury, upon the subject of naval stores on board the Dutch ships, which have been stopt and brought into port by his Majesty's cruizers, and Mr. West's letter in return thereto; whereby you will perceive that the expedient proposed by his Majesty's Attorney and Solicitor General for landing the said stores, and appropriating them to his Majesty's use, has not been approved of, and that the Lords of the Treasury do not think it in their power to give directions to the Commissioners of the Customs to permit their being

¹ Solicitor to the Admiralty (?).

landed, in regard they are imported in foreign bottoms, which is expressly contrary to the Act of Navigation ; nor that anything can be properly done in the case but by Parliament, by a clause for that purpose. The Lords Commissioners for the Admiralty have therefore commanded me to signify their direction to you to attend Mr. Legge, council for the Admiralty, and lay the inclosed papers before him, and acquaint him it is their Lordships' order that he prepare a proper clause to be inserted in the Act of Parliament for this purpose with all possible dispatch, and transmit it hither.

[Dated 7th June, 1746.]

1746. Lords of the Admiralty to Harrington, as to their having no power to control privateers commissioned by colonial governors.—*S.P. Dom. Naval* 31, f. 71.

. . . Your Lordship will please to observe that these complaints¹ are not made against any of His Majesty's ships of war, but against privateers in America and the West Indies, over whom we have no influence, they receiving their commission for acting hostilities from the Governors of His Majesty's colonies abroad. And therefore we would humbly propose that in these and the like cases His Majesty would be pleased to send his directions to his said Governors, who alone have power to curb the insolencies of privatiers by calling their sureties to account.

¹ By the Dutch.

by revoking the commissions of such as are refractory, and by the influence of their power with the judges of the Vice Admiralty courts to prevent their proceeding to rash and unjust condemnation. . . .

[Dated 2nd July 1746.]

1746. French letter of marque.—*Adm. Ct. Prize Papers* 115, L'Hermine.¹

Louis Jean Marie de Bourbon, Duc de Penthièvre de Chateaullain et de Rambouillet, Gouverneur et Lieutenant General pour le Roy en sa Province de Bretagne, Amiral de France, A tous ceux qui ces Presentes Lettres verront, Salut. Le Roy ayant déclaré la guerre à l'Angleterre pour les raisons contenues dans la Déclaration que sa Majesté a fait publier dans toute l'étendue de son Royaume, Pays, Terres, et Seigneuries de son obéissance, et sa Majesté nous ayant commandé de tenir la main à l'observation de ladite Déclaration, en ce qui dépend du pouvoir et autorité qu'il a plu à sa Majesté attribuer à nostredite charge d'Amiral, avons donné congé, pouvoir, et permission à Antoine Bouchard de Boulogne de faire armer et équiper en guerre un corsaire nommé l'Hermine dudit Boulogne, du port de quarante tonneaux ou environ, qui est à present au port dudit Boulogne, avec tel nombre d'hommes, canons, boulets, poudres, plombs, et autres munitions de guerre et vivres qui y sont nécessaires pour le mettre en mer en estat de naviguer et courre sus aux pirates, fourbans, et gens sans aveu, mesme aux sujets du Roi d'Angleterre et autres ennemis de l'Etat, en quelques lieux qu'il les pourra rencontrer, aux costes de leurs pays, dans leurs ports, ou sur leurs rivières, mesme sur terre aux endroits où ledit Antoine Bouchard jugera à propos de faire les descentes pour

¹ There is a similar letter of marque, of 1704, for Le Valeur in *Prize Papers* 85. These are printed forms.

nuire ausdits ennemis, et y exercer toutes les voyes et actes permis et usitez par les Loix de la Guerre, les prendre et amener prisonniers avec leurs navires, armes, et autres choses dont ils serout saisis ; à la charge par ledit Antoine Bouchard de garder et faire garder par ceux de son équipage les Ordonnances de la Marine, porter pendant son voyage le Pavillon et Enseigne des Armes du Roy et les nostres ; faire enregistrer le present Congé au Greffe de l'Amirauté le plus proche du lieu où il fera son armement ; y mettre un Rolle signé et certifié de luy, contenant les noms et surnoms, la naissance et demeure des hommes de son équipage ; faire son retour audit lieu, ou autre port de France ; y faire son rapport par devant les officiers de l'Amirauté, et non d'autres, de ce que se sera passé durant son voyage ; nous en donner avis, et envoyer au Secrétaire général de la Marine sondit rapport, avec les pièces justificatives d'icelui pour estre sur le tout par nos ordonné ce que de raison. Prions et requerons tous Rois, Princes, Potentats, Seigneuries, Estats, Republiques, Amis, et Alliez de cette Couronne, et tous autres qu'il appartiendra de donner audit Antoine Bouchard dudit Boulogne toute faveur, aide, assistance, et retraite en leurs ports avec sondit vaisseau, équipage, et tout ce qu'il aura pû conquérir pendant son voyage, sans lui donner ni souffrir qu'il lui soit fait ou donné aucun trouble ni empeschement, offrant de faire le semblable lorsque nous en serons par eux requis. Mandons et ordonnons à tous officiers à tous officiers de Marine, et autres qu'il appartiendra, de le laisser surement et librement passer avec sondit vaisseau, arme, et équipages, et les prises qu'il aura pû faire, sans aucun empeschement ; mais au contraire lui donner tout le secours et assistance dont il aura besoin. Ces presentes non valables après un an du jour de la date de l'enregistrement d'icelles. En temoin de quoy, nous les avons signées, et icelles fait sceller du sceau de nos Armes, et contresigner par le Secrétaire général de la Marine. A Versailles le quatre jour du mois d'October mil sept cent quarante six, en vertu du certificat de Monsieur le juge.

L. J. M. DE BOURBON.

1746. Opinion as to the power of the Admiralty Courts of England and of Scotland to try prizes without a special commission.—*Adm. Sec. In Letters* 3885, 29 Oct. 1746.

Queries. 1^{mo}. Whether or not it is necessary and requisite that the high court of Admiralty of England should have a special commission from the Admiralty superadded to their ordinary jurisdiction before they can be authorized to condemn prizes ?

2^{do}. Considering the powers vested in the court by the Act of Parliament 1681, the Articles of the Union, and uniform practice of the court, is such a special commission from the Lords of the Admiralty requisite for the high court of Admiralty of Scotland, in order to authorize the judge of the said high court to proceed to such condemnation ?

To the first : We are of opinion the high court of Admiralty of England has an inherent jurisdiction to proceed in the tryal and condemnations of prizes, and that a special commission from the Admiralty is not necessary to authorize the court to proceed therein. Anciently such commissions were not granted, and though, for some time past, it has been usual to issue them upon declarations of war, we apprehend they are no more than notifications to the judge that he should proceed to exercise the jurisdiction antecedently had of condemning prizes, but gives him no new power or authority.

2^{do}. As it has not been the usage to issue out such notifications to the high court of

Admiralty of Scotland,¹ we are of opinion that the judges of that court have sufficient authority to proceed in the tryal and condemnation of prizes without any special commission from the Lords of the Admiralty.

W. MURRAY.
GEO. LEE.

October 29th 1746.

1746. Corbett to Crespigny;² to defend Admiral Rowley in proceedings taken against him for seizing corn in a neutral ship, to prevent it falling into the hands of the enemy.—*Adm. Sec. Out Letters* 1054, f. 505.

I am commanded by my Lords Commissioners of the Admiralty to send you the inclosed papers from Vice Admiral Rowley, setting forth that, when he commanded his Majesty's fleet in the Mediterranean, he caused a Dutch ship named the Two Brothers, John Pineapple master, to be stopped from proceeding to Genoa, on account of her being laden with wheat and oats, and consigned for that port; and, in order to prevent the cargo falling into the enemies' hands the said Admiral sent the ship into Gibraltar, where

¹ The question whether the Scottish court had power to try prize was raised again towards the end of the century, and was the cause of much discussion. It was finally settled by 6 Geo. IV, c. 120, s. 7, which vested it in the high court of Admiralty of England. The civil jurisdiction in Admiralty was transferred to the Court of Session by 11 Geo. IV and 1 Will. IV, s. 21.

² Secretary and proctor to the Admiralty, respectively.

part of the corn was sold to the best advantage for the owners, and the money offered to be paid to the master of the ship, which he refused to take; and the money being yet unpaid, notwithstanding it was tendered, the Admiral is cited in Doctors Commons to shew cause why he did not proceed to condemn the ship, the Two Brothers, and her cargo, which was not seized as a prize, but only to prevent her cargo falling into the enemies' hands. I am to signify their Lordships' direction to you to defend Vice Admiral Rowley in the said suit, and to let them know, from time to time, how you proceed therein.

1746. Case for opinion as to the legality of French privateers disposing of their prizes in Norway.—*Adm. Sec. Out Letters* 1054, f. 502.¹

The French privateers carry English prizes into the ports of Norway, where their goods and effects are sold, either by getting sentences of condemnation passed in France, while they remain within the Danish jurisdiction, or without any condemnation at all; and the goods so sold pay the duties of the country, and are exported to Hamburgh, Holland, or other foreign parts.

They go further, and suffer the French to fit out English prizes for privatiers, and to send them out a cruizing.

QUESTION.

How far it is consistent with treaties, or with the rules of neutrality?

¹ Of Dr. Paul, king's advocate. The opinion has not been found.

1747. Penrice to the Lords of the Admiralty ; as to proceedings to be taken against three ships sailing for India under commissions alleged to be from the Queen of Hungary.—*Adm. Sec. In Letters* 3881, 20th Feb.¹

Having received your Lordships' warrant of yesterday's date, wherein you are pleased to inform me that the secret committee of the East India Company have delivered a memorial to his Grace the Duke of Newcastle, his Majestie's principal Secretary of State, setting forth that they are informed that the ship *Hardwicke*, of forty guns, together with the *Cumberland* and *Kingston*, of thirty two guns each, have been fitted out as privateers, and are now in the *Downes*, and that they have reason to apprehend they are intended to proceed to the East Indies, together with several others, as transports or store ships, and are under a pretence of a commission from the Queen of Hungary to cruise upon the Indians, subjects of the Great Mogul, trading to the Turkish ports, and intend to lay in wait in the gulf of Mocha for the *Judda* pilgrim ship and other ships returning from that port ; and that they afterwards propose to take the city of *Surat*, belonging to the Mogul, but resorted to by the Turks, who constantly have great quantities of valuable effects there ; and that such a proceeding, as they conceive, may endanger the lives and effects of his Majestie's subjects within the dominions of the Turks and of the Great Mogul, and be attended with the ruin and total loss

¹ Cf. an undated (1697 ?) petition from the East India Company, *Add. MSS.* 25098, f. 473, and *supra*, p. 196.

of the Company's trade to the East Indies, to the great prejudice of his Majestie's revenue and the trade of the nation ; and praying that such measures may be immediately taken as may prevent the said ships from making war upon the subjects and effects of any other than his Majestie's open and declared enemies, and that they may not be permitted to sail or act under any other authority than that of his Majesty ; a copy of which memorial your Lordships were pleased to send me ; and in pursuance of his Majestie's pleasure to require me immediately to take all legal and proper steps for revoking and recalling the said commissions or letters of marque, and to inform myself by all possible means whether the commanders of the said ships have commissions or letters of marque from the Queen of Hungary, and whether their destination is to cruize in the East Indies, and to report my proceedings.

Now, in obedience to his Majestie's pleasure and your Lordships' warrant, I do humbly report that I caused your Lordships' warrant and the memorial to be forthwith layd before your Lordships' advocate, to the end that he might immediately take such steps as he shall advise to be legal and proper to cause the owners of the said ships, and the sureties of their commissions to be brought judicially before me, to answer such matters as may legally be objected against them, to the end that their commissions or letters of marque may be revoked and recalled. And your Lordships may be assured that, as soon as the matter is brought before me, I shall administer justice to the utmost of my ability, and have a due regard to his Majestie's pleasure and your Lordships' warrant. I am &c.

1747. Agreement made at sea between the captain of a French privateer and the mate of his English prize, that, in return for the latter receiving his liberty, a French prisoner in England of the same rank shall be set free.—*Adm. Sec. In Letters* 3881, 12th April.¹

Nous sousignés Jullien Deschesnais Tréhouart, capitaine du corsaire La Marie Magdelaine de St. Malo et Kenneth Mackenzée, tenant la qualité de mate sur le navire de guerre Anglois nommé le Prince Frederic, et commandé par ledit navire pour conduire en Angleterre une prise appelée Le Vray Breton de Corke, icelle faite d'abord sur les Anglois par le corsaire l'Alcide de St. Malo, reprise sur ledit corsaire l'Alcide par ledit Prince Frederic, et au fin reprise sur celui cy par ledit corsaire La Marie Magdelaine, sommes convenus de ce qui suit, scavoir : Que moy, dit capitaine dudit corsaire La Marie Magdelaine donne la liberté audit Sieur Kenneth Mackenzée, prisonnier sur ledit corsaire par moy commandé, de s'en aller en Angleterre par l'occasion d'un navire marchand suédois, allant à Corke, par moy rencontré au Nord quarte Nord Est des Surlinges, distance d'environ sept lieues, à cette condition, que par ledit Sieur Mackenzée sera renvoyé en France pour son échange un prisonnier françois tenant sa qualité sur nos vaisseaux, ou tel autre officier françois, s'il ne s'en trouvoit pas pour la present, de sadite qualité en Engleterre ; Et moy, Kenneth Mackenzée, m'oblige autant qu'il est en moy sur ma parole et conscience de renvoyer en France pour mon échange un prisonnier françois de madite qualité, ou tel autre à son deffaut. En foy de quoy nous avons signé lesdits presentes conventions et engagements fait

¹ This is enclosed in a letter from George Bellas to the secretary to the Admiralty.

double en mer a bord dudit corsaire le Marie Magdelaine
le 12^e Avril 1747.

DESCHESNAIS TREHOUART.
KENNETH MACKENZEE.

1747. Penrice to Corbett ; as to a Prussian ship seized for carrying contraband to the enemy.—*Adm. Sec. In Letters* 3881, 16th Ap. 1747.

I had yours dated the 14th of this instant, inclosing the translation of a letter wrote to my Lords Commissioners of Admiralty from Monsieur D'Andrié, minister from the King of Prussia, setting forth that the vessell Frederick II, Roi de Prusse, captain Schultz, belonging to subjects of his Prussian Majesty, laden with hemp and bound to Bourdeaux, had been taken by an English privateer, and her cargo confiscated as belonging to the French ; and that the proprietors have complained that 'tis threatened to do the same with regard to the ship.

That he has received express orders from the king of Prussia to reclaim in his name the said vessell, as belonging to his subjects, and that conformable to the treatys which subsist with neutral powers, the proprietors be reimbursed of their freight, and the crew indemnified of the charge that the prize has caused them.

Being desired by their Lordships to state the case, and report my opinion what answer is proper to make to the Prussian minister, I do humbly report that the vessell Frederick II, Roi de Prusse, captain Schultz, laden with hemp for Bordeaux, was seized by the Eagle privateer,

captain Bazely, as laden with contraband goods bound for an enemies' port ; for by the 5th Article of his Majesty's Instructions to privateers, pitch, tar, hemp &c. belonging to neutral countries and bound to the enemies' country are accounted contraband goods ; and by the second Article of the same Instructions all shipp's carrying any contraband goods to France or Spain shall be seized as prize to his Majesty. The cargo of this shipp being hemp bound for Bourdeaux was condemned in his Majesty's high court of Admiralty for prizes to Captain Bazely of the Eagle privateer, as liable to confiscation ; who likewise prayed sentence against the ship, according to the 2nd Article of Instructions, as contraband going to France.

A claim was given in behalf of the owners of the ship and freight, as subjects of his Prussian Majesty, a neutral prince in amity with his Majesty of Great Britain. They insisted upon their freight, and that the ship ought to be restored, notwithstanding the 2nd Article of his Majesty's Instructions to privateers. It was insisted that the ship was carrying on an illicit trade, contrary to the amity and friendship which ought to subsist between neutral powers, which ought not, by furnishing contraband goods, to make the condition of one friend better than [that of] the other ; that there was no treaty marine subsisting between his Britannic Majesty and the King of Prussia.

But as the property of the shipp was not proved, the court of Admiralty have directed the property of the shipp to be proved by the owners, merchants at Konigsburg, and that the ship was let to freight by the master without the knowledge of the design of lading hemp for France,

or the conditions made between the master and freighters.

This cause about the shipp being still depending, his Excellency the Prussian minister may make such application as shall be agreeable to justice and equity and the law of nations, to which always great regard will be had in his Majesty's high Court of Admiralty.

You will be so good as to lay this before my Lords Commissioners of the Admiralty, from 'Sir' &c.

1747. Notice by the Dutch East India Company that interlopers on their trade to the East will be seized, and their cargoes condemned as contraband.—
S.P. Dom. Naval 32, f. 326.

Tervenapatam(?)

To the Honorable Charles Hoyer, esquire, Governor of the Honourable English East India Company in Fort St. David &c. Council :

Honourable Sir, and very worthy friends,

As the Honourable the High Government on the part of the States of the United Netherlands, and the General Privileged East India Company at Batavia, our High Superiors, have again declared that all opium which is brought into these seas, to wit, within the Streights of Sunda, and through the Streights of Malacca, or which happens to be found by Dutch cruisers, shall be deemed in the strictest sense as contraband, and seizable for all persons that find or bring in the same, be it found in what ships or vessels soever ; And also from henceforward

they will not tolerate any more any trade in general, even of the most indifferent things, except what is carried on in or under Netherland or Dutch passes, at or upon such islands with whose natives and people the Netherland Company hath long ago had exclusive contracts, such as Java, Madura, Sambawa, and the other islands to the Eastward, Beston, Saleyer, Celebes, Bornea, Banca, and all the inner coasts of Sumatra, with all other places where the Netherlands East India Company pretends solely to the right of navigating and trading; Therefore we have the honour to give you notice &c hereby a formal information thereof, according to the orders given us by our High Superiors above mentioned, to the end that your Honour &c, and your subordinates may guard against damages, and have no plea from ignorance.

Castle of Negapatam, the 4th of May, 1747..

[Seven signatures.]

1747. Paul's¹ opinion as to the demand by Denmark that the rule of 'free ships, free goods' should cover naval stores in Danish ships for France.—*S.P. Foreign, Foreign Ministers &c.* 1, 10 June.

In humble obedience to your Lordship's commands sent to me by your letter of the 5th instant together with two memorialls presented by M. Solenthal, ambassador extraordinary from the king of Denmark, the first delivered by that minister to the Earl of Granville, when he was Secretary of State, the other presented to your

¹ Admiralty Advocate.

Lordship. In both these memorialls it is demanded that the treaty of commerce, between that crown and England of the year 1670, may be so altered and explained as that the Danish subjects may enjoy the same liberty of commerce during the present war with France as is reserved to those of the States General by the marine treaty of 1674. By which aforesaid treaty of 1670, under the 40th Article thereof, the principle of free ships making free goods the memorialist desires to establish.

I am directed by your Lordship to take this request or demand into serious consideration, and to report my humble opinion on this entire case, under the treaty to which it relates.

In the treaty between the crowns of England and Denmark made in 1670, in Article 40 there are these words: 'Also it is agreed that if the Hollander, or any other nation whatsoever, (the Swedish nation only excepted), hath already, or shall hereafter obtain any better articles, agreements, exemptions, or priviledges, than what are contained in this treaty from the King of Denmark, that the same and like privileges shall be likewise granted by the King of Great Britain and his subjects, effectually and fully, to all intents and purposes; and on the other side if the Hollander, or any other nation whatsoever, hath or shall obtain from His Majesty of Great Britain any better articles, agreements, exemptions or priviledges than what are contained in this treaty, that the same and like privileges shall be granted to the King of Denmark, and his subjects.'

From the time of making this treaty, the same has never been understood or held in courts of justice to be a sufficient protection to enemy's goods seized on board Danish ships.

The usage and practice under ancient treatys and conventions has always been thought to be properly explained and cleered up in all doubtfull points by the several acts, decrees, and decisions made thereupon, and submitted to by the contracting powers.

In the former war between Great Britain and France this priviledge that free ships should make goods free was claimed by the subjects of Denmark, but constantly disallowed in His Majesty's high court of Admiralty; and for this reason, because French agents are constantly employed in the purchase of naval stores in Denmark and Norway, which are very much wanted in France to equipe ships of war against Great Britain. If a liberty of carrying materials for war were allowed, it would be a permission given to aid and support one of the contending partys in the war, which would be contrary to the law of nations, under which it is expressly laid down as a maxim by the learned Grotius in his book *De jure belli et pacis*, Lib. 3, cap. 17, sect. 3 :— 'Eorum qui a bello abstinent officium est nihil facere quo validior fiat is qui improbam favet causam, aut quo justum bellum gerentes motus impediantur.' The learned Bynkershök in his book upon the public law, cap. 9, has these words :— 'Si medius sum, alteri non possum prodesse, aut alteri noceam.'

If this liberty and priviledge now desired should be granted, it would empower the subjects of Denmark to become carryers for any or all the enemys of Great Britain, and consequently they would protect a trade infinitely to the prejudice of His Majesty's dominions, which no friend to the King of Great Britain can properly desire at the present time.

All which is most humbly submitted to your Lordships' great wisdom.

Doctors Commons,
10 June 1747.

G. PAUL.

1747. Dutch placaat against exporting munitions of war and naval stores.—*Adm. Ct. Prize Papers* 122, St Jan Baptist.

This order against exporting warlike and shipping stores is based upon the ground that they were needed at home ; but more probably it was to avoid complications with England and other belligerents. The absence of such an order in later times led to the armed neutrality and war with England. The list of contraband is very comprehensive and includes boots, timber for ships, saddles, sail cloth, hemp, copper and other metals, hay, oats, straw, and horse beans. Goods for the use of the armies of Holland and her allies, or for her colonies are excepted. The placaat is in Dutch and printed. It is dated 7th July 1747.

1747. Penrice to Cleveland, as to the Drie Gesusters,¹ a Dutch ship, with a cargo of ship timber, Prussian property.—*Adm. Sec. In Letters* 3881, 15th July.

I had your letter dated the 7th of this instant, inclosing one from the Earl of Chesterfield, and a memorial from Mons. D'Andrié, minister from the King of Prussia, relating to a Dutch ship taken and carried into Plymouth, the 12th of May last, by the Otter, sloop of war, commanded

¹ See further as to this ship, *infra*, p. 347.

by Captain William Cust, desiring that the cargo may be released, as belonging to subjects of the King of Prussia, and expenses to the proprietor. And it being the directions of my Lords commissioners of the Admiralty to me, to state the case, with the proceedings that have been in the high court of Admiralty relating to the capture, to enable their Lordships to make answer thereto, I do humbly report :

That the ship *De Drie Gesusters*, Lammert Gosses master, is a Dutch ship of about 96 lasts ; that the master entered into a charterparty, at Amsterdam, to go with his ship to *Rugenswalde* in ballast, and there to take in a cargo of timber and planks fit for building ships, and from thence to proceed to *Brest* or *Port L'Orient*, where the voyage was to end and the freight be paid ; That accordingly he took in a lading at the port of *Rugenwalde*, which was put on board by Mr. Gom, a merchant there, who acted for James Francis Greffe, a merchant of *Stetin*, who was the sole lader of the said goods, which were to be landed and delivered to the Company of *Port L'Orient*, but upon whose account the master of the Dutch ship cannot set forth, but refers to a certificate or pass, wherein it is represented to the Regency of *Pomerania* by James Francis Greffe, merchant and burgher of *Stetin*, that he had laden at *Rugenwalde* and at *Stolpmunde* a Dutch ship called *De Drie Gesusters*, or *Three Sisters*, whereof Lammert Gosses is master, with wood and timber for shipping, oaken planks and deals and other timber, with an intent to cause the same to go from *Rugenwalde* and *Stolpmunde* for *L'Orient* in *Brittany*, on his own account, and on his own hazard, risque, and fortune.

This Dutch ship, with this cargo on board,

was seized about the 26th May N.S. about 13 miles to Northward of Ushant by his Majesty's ship the *Otter*, Captain William Cust commander, and brought to Plymouth.

This case is stated from the preparatory examinations and ship's papers. There are distinct claims given in for both ship and goods. Upon which this cause was brought before his Majesty's high court of Admiralty ; and upon full hearing the ship was decreed to be restored, being proved to be a Dutch ship. But the lading fully appearing to be ship timber and designed for Port L'Orient or Brest, enemy's ports, and plainly intended for the service of his Majesty's enemies, coming from a neutral port belonging to the king of Prussia, with whom no treaty marine is settled, was by the law of nations and his Majesty's instructions deemed to be contraband goods, to be made use of for aiding his Majesty's declared enemies, and as such liable to confiscation and condemnation.

The claimers of the cargo have a liberty of appealing to the right honourable the Lords commissioners for hearing prize causes ; and their Lordships have full power to affirm or reverse this interlocutory decree of the judge of his Majesty's high court of Admiralty, according to right and justice.

I desire you to lay this before my Lords commissioners of the Admiralty from, Sir, your &c.,

H. PENRICE.

1747. Penrice to Cleveland; objecting to give an opinion upon a case about to come before his court.—*Adm. Sec. In Letters* 3881, 25th Aug. 1747.

. . . I presume it is not expected that I should give any opinion in these cases, which are brought judicially before me in his Majesty's court of Admiralty for prizes. I therefore desire you to acquaint their Lordships that, when these causes are ready, the captors and claimers shall be fully heard as to their several and respective interests, and due regard shall be had to the rights and properties of the king of Prussia's subjects.

1747. Byng to the judge of the Minorca Vice Admiralty Court.—*Adm. Sec. In Letters* 3881, 13th Nov.¹

If you'll please to referr to my letter which I wrote to you when I was last at Mahon, the 23rd of June, I acquainted you that there was at that time a numerous army in Provence and Languedock both of French and Spanish troops, which would scarce be able to subsist in those countries, were it not for the supplys that was brought by sea to the different ports in Provence, and that it was necessary for his Majesty's service,

¹ This is enclosed in a letter (in Spanish) from Dr. Gabriel Olivar y Pardo, judge of the Minorca Vice Admiralty court, to the Lords of the Admiralty, in which he asks 'whether by the cruising of Admiral Byng about the port of Marseilles your Lordships do understand that the town of Marseilles was blockt up?' The same letter contains matter relating to the doings of Fortunatus Wright in the Mediterranean.

and the support of the common cause that such supplies of provisions, but more especialy of all kinds of corn going to the South of France in neutral vessells, should be stoped; which has been approved by the right honourable the Lords Commissioners of the Admiralty, notwithstanding the marine treaty with Holland. And as I was then cruizing, by the late Vice Admiral Medley's order, off the port of Marseilles, to prevent such supplies going into that or any other port for the use of the French, which place was then blocaded by a squadron of his Majesty's ships then under my command, I must desire you would proceed to sentence, agreeable to the fourth Article of the marine treaty between his Britannick Majesty and the States Generall, against the cargoes of the severall vessells going with corn to the coast of Provence for the supply of the French, which were stoped by his Majestie's ships, and sent into Mahon, and have been proceeded against in your court. [*Dated, Nov. 13, 1747.*]

1748. Penrice to Corbett, as to a declaration alleged to have been made by George II to Frederick II that goods, being the product of Prussia and not war material, should be free.—*Adm. Sec. In Letters* 3882, 29th Feb.

. . . I do not know that there is any treaty marine or of commerce between His Majesty of Great Britain and the King of Prussia, though the case mentions a declaration of His Britannick Majesty to his Prussian Majesty of the 29th May (9th June), declaring that the subjects of Prussia may carry goods of the produce of Prussia to all

countries in their own ships without any molestation, (ammunition and warlike stores only excepted). If his Majesty has been pleased to make such a declaration, it has not come to the knowledge of the high court of Admiralty, and will be very material in this case. It is therefore humbly desired, that an authentick copy of such declaration may be sent me as soon as possible, that the Admiralty court may take measures pursuant and agreeable to such his Majesty's declaration.

This refers to the cases of the *Drie Gesusters*, with timber from Rugenwalde in Pomerania to L'Orient, see above, p. 342, and the *Soleil Doré*, with rye from Königsberg to Bourdeaux. The rest of the letter relates to two other ships, the *Frau Juliana* and the *Juffrow Anna Elizabeth*. All the four ships, or their cargoes, were claimed as Prussian property, and their seizure was complained of by the Prussian minister in England.

1748. Commission to the Lords to require the judge to try captures from Genoese.
—See above, p. 297.

1750. Mediterranean pass.—*P.C. Register*
101, f. 514.¹

By the Commissioners for executing the office of Lord High Admiral of Great Britain and Ireland &c. and of his Majesty's Plantations &c.

¹ Some of the old passes having by capture and otherwise fallen into wrong hands, a new form was issued. The passes are on parchment, and are headed by a well-executed engraving of a three-decker of the period; a separate form was issued for ships belonging to Minorca, in which the ship engraved is a felucca-rigged trader. The superseded passes were similar, but not so well engraved.

Suffer the ship . . . to pass with her company, passengers, goods, and merchandise, without let, hindrance, seizure, or molestation; The said ship appearing unto us by good testimony to belong to the subjects of his Majesty, and to no foreigner. Given under our hands and the seal of the office of Admiralty the . . . day of . . . in the year of our Lord one thousand seven hundred and To all persons whom theas may concern.

By command of their Lordships.

1753. Report of the law officers as to the action of Frederick II in withholding payment of interest on the Silesian loan in reprisal for losses alleged to have been suffered by his subjects at the hands of English privateers.¹

May it please your Majesty,

In obedience to your Majesty's commands, signified to us by his grace the duke of Newcastle, we have taken the memorial, sentence of

¹ Printed in *Collectanea Juridica* i, 133. The original of this has not been found, nor the printed copy which was circulated amongst the courts of Europe. Though referred to in every textbook on international law, and considered by Dr. Joseph Phillimore in 1833 to be 'the most celebrated state paper of modern times,' it has, until recently, been accessible only in *Collectanea*. Montesquieu characterises it as 'réponse sans réplique,' *Lettres Familières*, xlv (not *Lettres Persans*, as in Phillimore and elsewhere); and Vattel, l. 2, c. 7, s. 84, and note, terms it 'un excellent morecau de droit des gens'; see Phillimore's *Memoire* of Sir G. Lee prefixed to the editor's Reports of Cases decided by Lee as judge of the Consistory Court. 'It has generally been adopted and received by eminent publicists and jurists of later times as text authority on the subjects which it pur-

the Prussian commissioners, and lists marked A and B, which were delivered to his grace by M. Michell, the Prussian secretary here, on the 23rd of November last; and also the printed *Exposition des motifs* &c, which was delivered to his grace the 13th of December last, into our serious consideration; and we have directed the proper officer to search the registers of the court of Admiralty, and inform us how the matter appeared from the proceedings there, in relation to the cases mentioned in the said lists A and B, which he has accordingly done.

And your Majesty having commanded us to report our opinions concerning the nature and regularity of the proceedings under the Prussian commission mentioned in the said memorial, and of the claim or demand pretended to be founded thereupon, and how far the same are consistent with, or contrary to, the law of nations, and any treaties subsisting between your Majesty and the King of Prussia, the established rules of Admiralty jurisdiction, and the laws of this kingdom.

For the greater perspicuity, we beg leave to submit our thoughts upon the whole matter in the following method:

First, to state the clear established principles of law.

ports to discuss'; Phillimore, *op. cit.* The same writer says that 'it has generally been understood to have been the joint composition of Sir George Lee and Mr. Murray. Lee was dean of arches, judge of the prerogative court of Canterbury, and king's advocate. Murray was solicitor-general and afterwards became Earl of Mansfield and C.J. Of the two other signatories Sir Dudley Ryder was attorney-general, and Dr. Paul, Admiralty advocate. Most of the documents relating to this dispute have recently been collected and printed by Rt. Hon. Sir Ernest Satow in *The Silesian Loan and Frederick the Great*, Clarendon Press, Oxford, 1915.

Secondly, to state the fact.

Thirdly, to apply the law to the fact.

Fourthly, to observe upon the questions, rules, and reasoning alledged in the said memorial, sentence of the Prussian commissioners, and *Exposition des Motifs* &c, which carry appearances of objections to what we shall advance upon the former heads.

First, as to the law :

When two powers are at war, they have a right to make prizes of ships, goods, and effects of each other upon the high seas ; whatever is the property of the enemy may be acquired by capture at sea ; but the property of a friend cannot be taken, provided he observed his neutrality.

Hence the law of nations has established :

That the goods of an enemy on board the ship of a friend may be taken.

That the lawful goods of a friend on board the ship of an enemy ought to be restored.

That contraband goods going to the enemy, though the property of a friend, may be taken as prize, because supplying the enemy with what enables him better to carry on the war is a departure from neutrality.

By the maritime law of nations universally and immemorially received, there is an established method of determination whether the capture be, or be not, lawful prize.

Before the ship or goods can be disposed of by the captor, there must be a regular judicial proceeding, wherein both parties may be heard, and condemnation thereupon as prize in a court of Admiralty, judging by the law of nations and treaties.

The proper and regular court for these condemnations is the court of that State to whom the captor belongs.

The evidence to acquit or condemn, with or without costs or damages, must, in the first instance, come merely from the ship taken, viz. the papers on board, and the examination on oath of the master and other principal officers ; for which purpose there are officers of Admiralty in all considerable sea ports of every maritime power at war, to examine the captains and other principal officers of every ship brought in as prize, upon general and impartial interrogatories. If there do not appear from thence ground to condemn as enemy's property, or contraband goods going to the enemy, there must be an acquittal ; unless from the aforesaid evidence the property shall appear so doubtful, that is reasonable to go into further proof thereof.

A claim of ship or goods must be supported by the oath of somebody, at least as to belief.

The law of nations requires good faith ; therefore every ship must be provided with complete and genuine papers, and the master at least should be privy to the truth of the transaction.

To enforce these rules, if there be false or colourable papers, if any papers be thrown overboard, if the master and officers examined *in præparatorio* grossly prevaricate, if proper ship's papers are not on board, or if the master and crew cannot say whether the ship or cargo be the property of a friend or enemy, the law of nations allows, according to the different degrees of misbehaviour or suspicion arising from the fault of the ship taken and other circumstances of the case, costs to be paid, or not to be received, by the claimant in case of acquittal and restitution.

On the other hand, if a seizure is made without probable cause, the captor is adjudged to pay costs and damages ; for which purpose all privateers are obliged to give security for their good behaviour ; and this is referred to and expressly stipulated by many treaties.¹

Though, from the ship's papers, and the preparatory examinations, the property do not sufficiently appear to be neutral, the claimant is often indulged with time to send over affidavits to supply that defect ; if he will not shew the property by sufficient affidavits to be neutral, it is presumed to belong to the enemy. Where the property appears from evidence not on board the ship, the captor is justified in bringing her in, and excused paying costs, because he is not in fault ; or, according to the circumstances of the case, may be justly entitled to receive his costs.

If the sentence of the court of Admiralty is thought to be erroneous, there is in every maritime country a superior court of review, consisting of the most considerable persons, to whom the parties, who think themselves aggrieved, may appeal ; and this superior court judges by the same rule which governs the court of Admiralty, viz. the law of nations, and the treaties subsisting with that neutral power whose subject is a party before them.

If no appeal is offered, it is an acknowledgement of the justice of the sentence by the parties themselves, and conclusive.

¹ Treaty between England and Holland, 17 Feb. 1668, Art. 13 ; treaty 1 Dec. 1674, Art. 10 ; Treaty between England and France at St. Germain, 24 Feb. 1677, Art. 10 ; Treaty of commerce at Ryswick, 20 Sep. 1697, between France and Holland, Art. 30 ; Treaty of commerce at Utrecht, 31 March 1713, between Great Britain and France, Art. 29.

This manner of trial and adjudication is supported, alluded to, and enforced by many treaties.¹

In this manner all captures at sea were tried during the last war, by Great Britain, France, and Spain, and submitted to by the neutral powers. In this method, by courts of Admiralty, acting according to the law of nations and particular treaties, all captures at sea have immemorially been judged of in every country of Europe. Any other method of trial would be manifestly unjust, absurd, and impracticable.

Though the law of nations be the general rule, yet it may, by mutual agreement between the two powers, be varied or departed from ;

¹ As appears with respect to courts of Admiralty adjudging the prizes taken by those of their own nation, and with respect to the witnesses to be examined in those cases, from the following treaties: Treaty between England and Holland, 17 Feb. 1668, Arts. 9 and 14 ; Treaty 1 Dec. 1674, Art. 11 ; Treaty 29 April 1689, Arts. 12, 13 ; Treaty between England and Spain 23 May 1667, Art. 23 ; Treaty of commerce at Ryswick, 20 Sep. 1697, between France and Holland, Arts. 26 and 31 ; Treaty between England and France, 3 Nov. 1655, Arts. 17 and 18 ; Treaty of commerce between England and France at St. Germain, 29 March 1632, Arts. 5 and 6 ; Treaty at St. Germain, 24 Feb. 1677, Art. 7 ; Treaty of commerce between Great Britain and France at Utrecht, 31 March 1713, Arts. 26 and 30 ; Treaty between England and Denmark, 29 Nov. 1669, Arts. 23 and 34. Heineccius, who was privy councillor to the king of Prussia, and held in the greatest esteem, in his treatise *De Navibus ob vecturam vetitarum mercium commissis*, cap. 2, ss. 17 and 18, speaks of this method of trial.

With respect to appeals or reviews : from treaty between England and Holland, 1 Dec. 1674, Art. 12, as it is explained by Art. 2 of the Treaty of Westminster, 6 Feb. 1715-6 ; Treaty between England and France at St. Germain, 24 Feb. 1677, Art. 12 ; Treaty of commerce at Ryswick, 20 Sep. 1697, between France and Holland, Art. 33 ; Treaty of commerce at Utrecht, 31 March 1713, between Great Britain and France, Arts. 31 and 32 ; and other Treaties.

and where there is an alteration or exception introduced by particular treaties, that is the law between the parties to the treaty ; and the law of nations only governs so far as it is not derogated from by the treaty.

Thus by the law of nations, where two powers are at war, all ships are liable to be stopped and examined to whom they belong, and whether they are carrying contraband goods to the enemy ; but particular treaties have enjoined a less degree of search, on the faith of producing solemn passports, and formal evidences of property duly attested.

Particular treaties too have inverted the rule of the law of nations, and by agreement declared the goods of a friend on board the ship of an enemy to be prize, and the goods of an enemy on board the ship of a friend to be free, as appears from the treaties already mentioned, and many others.¹

So likewise, by particular treaties, some goods reputed contraband by the law of nations are declared to be free.

If a subject of the king of Prussia is injured by, or has a demand upon any person here, he ought to apply to your Majesty's courts of justice, which are equally open and indifferent to foreigner or native ; so, *vice versâ*, if a subject here is wronged by a person living in the dominions of his Prussian Majesty, he ought to apply for redress to the King of Prussia's courts of justice.

If the matter of complaint be a capture at sea during war, and the question relative to prize,

¹ Particularly by the aforesaid treaty between England and Holland, 1 Dec. 1674, and the Treaty of Utrecht between Great Britain and France.

he ought to apply to the judicatures established to try these questions.

The law of nations, founded upon justice, equity, convenience, and the reason of the thing, and confirmed by long usage, does not allow of reprisals, except in case of violent injuries directed or supported by the state, and justice absolutely denied *in re minime dubiâ* by all the tribunals, and afterwards by the prince.¹

Where the judges are left free, and give sentence according to their conscience, though it should be erroneous, that would be no ground for reprisals. Upon doubtful questions different men think and judge differently; and all a friend can desire is, that justice should be impartially administered to him, as it is to the subjects of that prince in whose courts the matter is tried.

Secondly, as to the fact.

We have subjoined hereto two lists tallying with those marked A and B, which were delivered to his grace the Duke of Newcastle by M. Michell, with the said memorial, the 23rd of November last; and also printed at the end of the said *Exposition des Motifs* &c, from whence it will appear, that as to the list A, which contains 18 ships and their cargoes:

(4) If ever taken, were restored by the captors themselves, to the satisfaction of the Prussians,

¹ Grotius, *De jure belli ac pacis*, lib. 3, cap. 2, sect. 4, 5. Treaty between England and Holland, 31 July 1667, Art. 31: reprisals shall not be granted till justice has been demanded according to the ordinary course of law. Treaty of commerce at Ryswick, 20 Sep. 1697, between France and Holland, Art. 4: reprisals shall not be granted but on manifest denial of justice.

who never have complained in any court of justice here.

(1) Was restored by sentence, with full costs and damages, which were liquidated at £280r 12s. 1d. sterling.

(3) Ships were restored by sentence, with freight for such of the goods as manifestly belonged to the enemy, and were condemned.

(4) Ships were restored by sentence, but the cargoes, or part of them, condemned as prize or contraband, and are now alledged in the lists A or B to have been Prussian property.

(5) Ships and cargoes were restored by sentence, but the claimant subjected to pay costs, because from the ship papers and preparatory examinations, there was ground to have condemned, and the restitution was decreed merely on the faith of affidavits afterwards allowed.

(1¹/₈) Ship and cargo was restored by sentence upon an appeal, but, from the circumstances of the capture, without costs on either side.

There need no observations upon this list. As to the eight cases first above mentioned, there cannot be colour of complaint.

As to the four next, the goods must be admitted to have been rightly condemned, either as enemy's property or contraband, for they are not now mentioned in the lists A or B.

If contraband, the ship could have neither freight nor costs, and the sentences were favourable in restoring the ships, upon presumption that the owners of the ships were not acquainted with the nature of the cargo or the owners thereof. If enemy's property, the ships could not be entitled to freight, because the bills of lading were false, and purported the property to belong to Prussians.

The ships could not be entitled to costs,

because the cargoes, or part of them, being lawful prize, the ships were rightly brought in.

As the six remaining ships and cargoes were restored, the only question must be upon paying or not receiving costs, which depends upon the circumstances of the capture, the fairness of the ship's documents, and conduct of her crew ; and neither the Prussian commissioners, the said memorial, or said *Exposition des Motifs* &c alledge a single reason why, upon the particular circumstances of these cases, the sentences were wrong.

As to the list B :

Every ship, on board which the subjects of Prussia claim to have had property, was bound to or from a port of the enemy ; and many of them appeared to be, in part, laden with the goods of the enemy, either under their own or fictitious names.

In every instance where it is suggested that any part of the cargo belonged to a Prussian subject, though his property did not appear from the ship's papers, or preparatory examinations, which it ought to have done, sufficient time was indulged to that Prussian subject to make an affidavit that the property was *bonâ fide* in him ; and the affidavit of the party himself has been received as proof of the property of the Prussian, so as to intitle him to restitution.

Where the party will not swear at all, or swears evasively, it is plain he only lends his name to cover the enemy's property, as often came out to be the case beyond the possibility of doubt.

It appears by a letter 29th of May and 9th of June 1747, from M. Andriè to his Prussian Majesty, exhibited in a cause, and certified to

be a true extract by M. Michell under his hand, that this colourable manner of screening the goods of the enemy was stated in the following words :

‘ Your Majesty’s subjects ought not to load on board neutral ships any goods really belonging to the enemies of England, but to load them for their own account, whereby they may safely send them to any country they shall think proper, without any risk. Then, if privateers commit any damage to the ships belonging to your Majesty’s subjects, you may depend on full justice being done here, as in all the like cases hath been done.’

List B contains thirty three cases.

(2) Two of them never came before a court of justice in England, but (if taken) were restored by the captors themselves, to the entire satisfaction of the owners.

(16) In sixteen of them the goods claimed by the Prussian subjects appear to have been actually restored, by sentence, to the masters of ships in which they were laden ; and by the custom of the sea the master is in the place of the lader, and answerable to him.

(14) In fourteen of the cases the Prussian property was not verified by the ships’ papers, or preparatory examinations, or claimant’s own affidavit, which he was allowed time to make.

(¹/₃₃) And the other cause, with respect to part of the goods, is still depending, neither party having moved for judgment.¹ And so conscious were the claimants that the court of

¹ The Prussian has since applied for judgment on the 29th of January, and obtained restitution.

Admiralty did right, there is not an appeal in a single instance in list B ; and but one in list A.

Thirdly, to apply the law to the fact.

The sixth question in the said *Exposition des Motifs* &c states the right of reprisals to be 'puisque'on leur a si long tems dénié toute la justice, qu'ils étoient fondés de demander.'

The said memorial founds the justice and propriety of his Prussian Majesty's having recourse to reprisals, because his subjects, 'n'ont pu obtenir jusqu'à present aucune justice des tribunaux Anglois qu'ils ont réclamés ou du gouvernement auquel ils ont porté les plaintes.' And in another part of the memorial it is put, 'apres avoir en vain demandé des reparations de ceux qui seuls pouvoient les faire.'

The contrary of all which is manifest from the above state and lists hereto annexed.

In six of the cases specified, if such captures ever were made, the Prussian subjects were so well satisfied with the restitution, that they never complained in any court whatsoever of this kingdom.

The rest were judged of by a court of Admiralty, the only proper court to decide of captures at sea, both with respect to the restitution and the damages and costs, acting according to the law of nations, the only proper rule to decide by ; and justice has been done by the court of Admiralty so impartially, that all the ships alleged in list A to have been Prussian were restored, and all the cargoes mentioned in either list, A or B, were restored, excepting fifteen, one of which is still undetermined.

And, in all cases in both lists, justice was

done so entirely to the conviction of the private conscience of the Prussian claimants, that they have acquiesced under the sentences without appealing, except in one single instance, where part of the sentence complained of was reversed.

Though the Prussian claimants must know that, by the law of nations, they ought not to complain to their own sovereign till injustice *in re minime dubiâ* was finally done them, past redress ; and though they must know that rule of nations held more strongly upon this occasion, because the property of prize was given to the captors, and ought therefore to be litigated with them. The Prussian, who by his own acquiescence, submits to the captors having the prize, cannot afterwards with justice make a demand upon the State. If the sentence was wrong, it is owing to the fault of the Prussian that it was not redressed. But it is not attempted to be shewn, even now, that these sentences were unjust in any part of them, according to the evidence and circumstances appearing before the court of Admiralty ; and that is the criterion.

For as to the Prussian commission to examine these cases, *ex parte*, upon new suggestions, it never was attempted in any country of the world before ; prize or not prize must be determined by courts of Admiralty belonging to the power whose subjects make the capture. Every foreign prince in amity has a right to demand that justice shall be done his subjects in these courts, according to the law of nations, or particular treaties, where any are subsisting. If *in re minime dubiâ* these courts proceed upon foundations directly opposite to the law of nations, or subsisting treaties, the neutral state has a right to complain of such determination.

But there never was, nor never could be, any other equitable method of trial. All the maritime nations of Europe have, when at war, from the earliest times, uniformly proceeded in this way, with the approbation of all the powers at peace. Nay, the persons acting under this extraordinary and unheard of commission from his Prussian Majesty do not pretend to say, that in the four cases of goods condemned here, for which satisfaction is demanded in list A, the property really belonged to Prussian subjects; but they profess to proceed upon this principle, evidently false, that though these cargoes belonged to the enemy, yet, being on board any neutral ship, they were not liable to enquiry, seizure, or condemnation.

Fourthly, from the questions, rules, reasonings, and matters alledged in the said memorial, sentences of the Prussian commissioners, and *Exposition des Motifs* &c the following propositions may be drawn as carrying the appearance of objections to what has been above laid down:

First proposition:

That by the law of nations the goods of an enemy cannot be taken on board the ship of a friend; and this the Prussian commissioners lay down as the basis of all they pretend to do.

Answer. The contrary is too clear to admit of being disputed. It may be proved by the authority of every writer of the law of nations; some of different countries are referred to.¹ It

¹ *Il Consolato de Mare*, cap. 273, expressly says: 'The enemy's goods found on board a friend's ship, shall be confiscated; and this is a book of great authority. Grotius *De jure belli ac pacis*, lib. iii, cap. 1, sect. 5, numero 4, in the notes cites this passage in the *Il Consolato*; and in his notes

may be proved by constant practice, ancient and modern ; but the general rule cannot be more strongly proved than by the exception which particular treaties have made to it.¹

Second Proposition : It is alledged that Lord Carteret in 1744, by two verbal declarations, gave assurances in your Majesty's name that nothing on board a Prussian ship should be seized, except contraband ; consequently, that all effects not contraband, belonging to the enemy, should be free ; and that these assurances were afterwards confirmed in writing by Lord Chesterfield, the 5th of January 1747.

Answer : The fact makes this question not very material, because there are but four instances in lists A or B where any goods on board a Prussian ship have been condemned, and no satisfaction is pretended to be demanded for any of those four cargoes in lists A and B. However, it may be proper to shew how groundless this pretence is.

Taking the words alledged to have been said

lib. iii, cap. 6, sect. 6. Loccenius, *De jure maritime*, lib. ii, cap. 4, sect. 12. Voet, *De jure militari*, cap. 5, num. 21. Heineccius, the learned Prussian before quoted, *De navibus ob vecturam velitarum mercium commissis*, cap. 2, sect. 9, is clear and explicit upon this point. Bynkeshoeck *Quæstiones juris publici*, lib. i, cap. 14, per totum. Zouch, (an Englishman) in his book, *De judicio inter gentes*, pars 2, sect. 8, numero 6. Treaty between Great Britain and Sweden 23 Oct. 1661, Art. 12 and 13. Treaty between Great Britain and Denmark 19 Nov. 1669, art. 2, and the passport or certificate settled by the treaty, are material to this point.

¹ Treaty between France and England, 24 Feb. 1677, Art. 8. Treaty of Utrecht between France and England, 1713, Art. 17. Treaty between England and Holland 17 Feb. 1668, Art. 10. Treaty between England and Holland 1 Dec. 1674, Art. 8. Treaty between England and Portugal, 10 July 1654, Art. 23. Treaty between France and the States General at Utrecht, 11 April 1713, Art. 26.

by Lord Carteret as they are stated, they do not warrant the inferences endeavoured to be drawn from them. They import no new stipulation different from the law of nations, but expressly profess to treat the Prussians upon the same foot with the subjects of other neutral powers under the like circumstances, *i.e.*, with whom there was no particular treaty. For the reference to neutral powers cannot be understood to communicate the terms of any particular treaty. It is not so said. The treaties with Holland, Sweden, Russia, Portugal, Denmark &c, all differ. Who can say which was communicated? There would be no reciprocity; the king of Prussia does not agree to be bound by the clauses to which other powers have, by their respective treaties, agreed. No Prussian goods on board an enemy's ship have ever been condemned here; and yet they ought, if the treaties with Holland were to be the rule between Great Britain and Prussia; nay, if these treaties were to be the rule, all now contended for, on the part of Prussia, is clearly wrong; because by treaty the Dutch, in the last resort, are to apply to the court of appeal here.

Treaty of alliance between Great Britain and Holland, at Westminster, the 6th of February 1715-16, Art. II.

'Whereas some disputes have happened touching the explanation of the 12th article of the treaty marine in 1674, it is agreed and concluded for deciding any difficulty upon that matter, to declare by these presents that by the provisions mentioned in the said article are meant those which are received by custom in Great Britain and the United Provinces, and always have been received, which have been granted, and

always have been received, which have been granted, and always are granted, in the like case, to the inhabitants of the said countries, and to every foreign nation.'

Lord Carteret is said to have twice refused, in which M. Andrié acquiesces, to give anything in writing, as not usual in England

Supposing the conversations to mean no more than a declaration of course that justice should be done to the Prussians in like manner as to any other neutral power, with whom there was no treaty, there was no occasion for instruments in writing ; because in England the crown never interferences with the course of justice. No order or intimation is ever given to any judge. Lord Carteret therefore knew that it was the duty of the court of Admiralty to do equal justice, and that they would, of themselves, do what he said to M. Andrié.

Had it been intended, by agreement, to introduce between Prussia and England a variation in any particular from the law of nations, and consequently a new rule for the court of Admiralty to decide by, it could only be done by a solemn treaty, in writing, properly authorised and authenticated. The memory of it could not otherwise be preserved ; the parties interested, and the courts of Admiralty, could not otherwise take notice of it.

But lord Chesterfield's confirmation, in a letter of the 6th of January 1747, being relied upon, the books of the secretary's office have been searched, and the letter to M. Michell is found, which is *verbatim* as follows :

Monsieur,

Ayant eu l'honneur de recevoir les ordres du roy sur

ce qui a formé le sujet du memoire que vous m'avez remis du 8 de ce mois, N.S., je n'ai pas voulu tarder à vous informer, que sa Majesté, pour ne rien omettre par où elle peut temoigner ses attentions envers le roy votre maitre, ne fait nulle difficulté de declarer, qu'elle n'a jamais en l'intention, ni ne l'aura jamais, de donner le moindre empechement à la navigation des sujets Prussiens, tant qu'ils auront soin d'exercer leur commerce d'une maniere licite, et conformément a l'ancien usage établi et reconnu parmi les puissances neutres.

Que sa majesté Prussienne ne peut pas ignorer, qu'il y a des traités de commerce qui subsistent actuellement entre la Grande Bretagne et certaines états neutres, et qu'au moyen des engagements formellement contractés de part et d'autre par ces mêmes traités, tout ce qui regard la maniere d'exercer leur commerce reciproquement, a été finalement constaté et réglé.

Qu'en même tems il ne paroît point qu'aucun traité de la nature susdite existe à present, ou a jamais existé, entre sa Majesté et le Roy de Prusse ; mais que pourtant cela n'a jamais empêché que les sujets Prussiens n'ayent été favorisés l'Angleterre, par rapport à leur navigation, autant que les autres nations neutres ; et cela étant, sa Majesté ne presuppose pas, que l'idée du Roy votre maitre seroit d'exiger d'elle des distinctions, encore moins des preferences, en faveur de ses sujets à cet égard.

Que de plus sa Majesté Prussienne est trop éclairée pour ne pas connoître, qu'il y a des loix fixes et établies dans ce gouvernement, dont ou ne peut nullement s'écarter ; et que s'il arrivoit que la marine Angloise s'avisât de faire le moindre injustice aux sujets commerçaus du Roy votre maitre, il y a un tribunal ici, savoir, la haute cour de l'amirauté, à laquelle ils se trouvent en droit de s'adresser et de porter leurs plaintes ; assurés d'avance, en pareil cas, qu'on leur y rendra bonne justice ; les procedés juridiques de la dite cour étant, et ayant été de tout tems, hors d'atteinte et irreprochables ; temoin, nombre d'exemples où les vaisseaux neutres, pris illicitement, ont été restitués avec fraix et dommages aux proprietaires.

Voici ce que le Roy m'a ordonné de vous répondre sur le contenu de votre dit memoire ; et sa Majesté ne sauroit que se flatter, qu'en consequence de ce que je viens d'avancer, il ne restera plus rien à desirer au Roy votre maitre relativement à l'objet dont il est question ; et le Roy s'en croit d'autant plus assuré, qu'il est persuadé que sa Majesté Prussienne ne voudroit rien demander que ne fut équitable.

Je suis, avec bien de la consideration, Monsieur
Votre très humble & très obeissant serviteur

CHESTERFIELD.

There need no observation ; it is explicit, and in express terms puts Prussia upon the foot of other neutral powers with whom there was no treaty, and points out the proper way for applying for redress.

The verbal declarations made by Lord Carteret in 1744, which are said to have been confirmed by this letter from Lord Chesterfield, cannot have meant more than the letter expresses.

And it is manifest by the above extract from M. Andrié's letter to his Prussian Majesty, that in May 1747 M. Andrié himself understood that goods of the enemy taken on board neutral ships ought to be condemned as prize.

It is evident from authentic acts, that the subjects of Prussia never understood that any new right was communicated to them.

Before the year 1746 the Prussians do not appear to have openly engaged in covering the enemy's property.

The men of war and privateers could not abstain from captures in consequence of Lord Carteret's verbal assurances in 1744, because they never were nor could be known ; and there was no occasion to notify them, supposing them only to promise impartial justice. For all ships

of war were bound to act, and courts of Admiralty to judge, according to the law of nations and treaties.

Till 1746 the Prussian documents were a certificate of the Admiralty, upon the oath of the builder, that the ship was Prussian built, and a certificate of the Admiralty, upon the oath of the owner, that the ship was Prussian property.

From 1746 the Prussians engaged in the gainful practice of covering the enemy's goods, but were at a loss in what shape, and upon what pretences it might best be done.

On board the ship the *Trois Soeurs* was found a pass bearing date at Stettin the 6th of October 1746, under the royal seal of the Prussian regency of Pomerania &c. alledging the cargo, which was ship timber bound for Port L'Orient, to be Prussian property, and in consequence thereof claiming freedom of the ship.

Claiming freedom to the ship from the property of the cargo being quite new, the proposition was afterwards reversed. And on board a ship called the *Jumeaux* was found a pass bearing date at Stettin the 27th of June 1747, under the royal seal &c. alledging the ship to be Prussian property, and in consequence thereof claiming freedom to the goods.

But this pass was not solely relied on, for there was also found on board the same ship another pass, bearing date at Stettin the 14th of June 1747, under the royal seal, &c. alledging the cargo to be Prussian property.

And it is remarkable that the oaths upon which these passes were granted, appeared manifestly to be false ; and neither of the cargoes to which they relate are now so much as alledged to have been Prussian property in said lists A or B.

It being mentioned in the said *Exposition des Motifs* &c. that M. Michell, in September 1747, made verbal representations to Lord Chesterfield in respect to the cargo taken on board the said ship called the *Trois Soeurs*, which was claimed as Prussian property, and no mention being made in lists A and B of the said cargo, we directed the proceedings in that cause to be laid before us; where it appears in the fullest and clearest manner, from the ship papers and depositions, that the cargo was timber, laden on the account and at the risque of Frenchmen, to whom it was delivered at Port L'Orient, they paying freight according to charter-party; that the Prussian claimant was neither freighter, lader, or consignee; and had no other interest or concern in the matter than to lend his name and conscience. For he swore that the cargo was his property, and laden on or before the 6th of October 1746, and yet the ship was then in ballast, and the whole of the cargo in question was not laden before May 1747.

Several other Prussian claims had, in like manner, come out so clearly to be merely colourable, that M. Andrié, from his said letters [of] the 29th of May and the 9th of June 1747, appears to have been ashamed of them.

Third Proposition: 'That Lord Carteret, in his said two conversations, specified, in your Majesty's name, what goods should be deemed contraband.'

Answer. The fact makes this question totally immaterial; because no goods condemned as contraband, or which were alledged to be so, are so much as now suggested to have been Prussian property in the said lists A and B. And there-

fore, whether as enemy's property or contraband, they were either way rightly condemned ; and the bills of lading being false, the ships could not be entitled to freight.

But if the question was material, the verbal declarations of a minister in conversation might shew what he thought contraband by the law of nations, but never could be understood to be equivalent to a treaty derogating from that law.

All the observations upon the other parts of these verbal declarations hold equally as to this.

Fourth proposition : ' That the British ministers have said that these questions were decided by the laws of England.'

Answer : They must have been misunderstood ; for the law of England says, that all captures at sea, as prize, in time of war, must be judged of in a court of Admiralty according to the law of nations and particular treaties, where there are any.

There never existed a case where a court, judging according to the laws of England only, ever took cognizance of prize.

The property of prizes being given, during the last war, to the captors, your Majesty could not arbitrarily release the capture ; but left all cases to the decision of the proper courts, judging by the law of nations and treaties, where there were any ; and it never was imagined that the property of a foreign subject, taken as prize on the high seas, could be affected by laws peculiar to England.

Fifth Proposition : ' That your Majesty could no more erect tribunals for trying these matters than the King of Prussia.'

Answer. Each crown has, no doubt, an equal right to erect Admiralty courts for the trial of prizes taken by virtue of their respective commissions; but neither has a right to try the prizes taken by the other; or to reverse the sentences given by the other's tribunal. The only regular method of rectifying their errors is, by appeal to the superior court.

This is the clear law of nations; and by this method prizes have always been determined in every other maritime country of Europe as well as England.

Sixth Proposition: 'That the sea is free.'

Answer. They who maintain that proposition in its utmost extent, do not dispute but that when two powers are at war, they may seize the effects of each other upon the high seas, and on board the ships of friends; therefore that controversy is not in the least applicable upon the present occasion.¹

Seventh Proposition: 'Great Britain issued reprisals against Spain, on account of captures at sea.'

Answer. These captures were not made in time of war with any power.

They were not judged of by courts of Admiralty, according to the law of nations and treaties, but by rules which were themselves complained of in revenue courts; the damages were afterwards admitted, liquidated at a certain sum, and agreed to be paid by a convention, which was not performed; therefore reprisals

¹ This appears from Grotius, in the passages above cited, lib. 3, cap. 1, sect. 5, nu. 4, in his notes; and lib. 3, cap. 6, sect. 6, in his notes.

issued, but they were general. No debts due here to Spaniards were stopped; no Spanish effects here were seized; which leads to one observation more:

The King of Prussia has engaged his royal word to pay the Silesia debt to private men.

It is negotiable, and many parts may have been assigned to the subjects of other powers. It will not be easy to find an instance where a prince has thought fit to make reprisals upon a debt due from himself to private men. There is a confidence that this will not be done. A private man lends money to a Prince upon the faith of an engagement of honour, because a Prince cannot be compelled, like other men, in an adverse way, in a court of justice. So scrupulously did England, France, and Spain adhere to this public faith, that even during the war they suffered no enquiry to be made, whether any part of the public debts was due to subjects of the enemy, though it is certain many English had money in the French funds, and many French had money in ours.

This loan to the late Emperor of Germany, Charles the VIth, in January 1734-5, was not a State transaction, but a mere private contract with the lenders, who advanced their money upon the Emperor's obliging himself, his heirs and posterity, to repay the principal, with interest, at the rate, in the manner, and at the times in the contract mentioned, without any delay, demur, deduction or abatement whatsoever; and lest the words and instruments made use of should not be strong enough, he promises to secure the performance of his contract in and by such instruments, method, manner, form, and words, as should be most effectual and valid to bind the

said Emperor, his heirs, successors, and posterity, or as the lenders should reasonably desire.

As a specific real security, he mortgaged his revenues arising from the Duchies of Upper and Lower Silesia for payment of principal and interest ; and the whole debt, principal and interest, was to be discharged in the year 1745. If the money could not be paid out of the revenues of Silesia, the Emperor, his heirs and posterity, still remained debtors, and were bound to pay. The eviction or destruction of a thing mortgaged does not extinguish the debt or discharge the debtor.

Therefore the Empress Queen, without the consent of the lenders, made it a condition of her yielding the Duchies of Silesia to his Prussian Majesty, that he should stand in the place of the late Emperor in respect of this debt.

The seventh of the preliminary Articles between the Queen of Hungary and the King of Prussia, signed at Breslau the 11th of June 1742, is in these words : ' Sa Majesté le Roi de Prusse se charge du seul payment de la somme hypothéquée sur la Silesie aux marchands Anglois, selon le contract signé a Londres le 7^{me} de Janvier 1734-5.'

This stipulation is confirmed by the ninth Article of the treaty between their said Majesties, signed at Berlin the 28th of July 1742.

Also renewed and confirmed by the second Article of the treaty between their said Majesties, signed at Dresden the 25th of December 1745.

In consideration of the Empress Queen's cession, his Prussian Majesty has engaged to her that he will pay this money *selon le contract*, and consequently has bound himself to stand in the place of the late Emperor in respect of this money, to all intents and purposes.

The late Emperor could not have seized this money as reprisals, or even in case of open war between the two nations, because his faith was engaged to pay it without any delay, demur, deduction, or abatement whatsoever. If these words should not extend to all possible cases, he hath plighted his honour to bind himself by any other form of words more effectually to pay the money ; and therefore was liable at any time to be called upon to declare expressly that it should not be seized as reprisals or in case of war ; which is very commonly expressed when sovereign Princes or States borrow money from foreigners. Therefore, supposing for a moment that his Prussian Majesty's complaint was founded in justice and the law of nations, and that he had a right to make reprisals in general, he could not, consistent with his engagements to the Empress Queen, seize this money as reprisals. Beside, this whole debt, according to the contract, ought to have been discharged in 1745. It should, in respect of the private creditors, in justice and equity, be considered as if the contract had been performed ; and the Prussian complaints do not begin till 1746, after the whole debt ought to have been paid.

Upon this principle of natural justice, French ships and effects wrongfully taken after the Spanish war, and before the French war, have, during the heat of war with France, and since, been restored by sentence of your Majesty's courts to the French owners. No such ships or effects were ever attempted to be confiscated as enemy's property here during the war ; because, had it not been for the wrong first done, these effects would not have been in your Majesty's dominions. So, had not the contract been first

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broke by non-payment of the whole loan in 1745, this money would not have been in his Prussian Majesty's hands.

Your Majesty's guaranty of these treaties is entire, and must therefore depend upon the same conditions upon which the cession was made by the Empress Queen.

But this reasoning is, in some measure, superfluous; because, if the making any reprisals upon this occasion be unjustifiable, which we apprehend we have shewn, then it is not disputed but that the non-payment of this money would be a breach of his Prussian Majesty's engagements, and a renunciation, on his part, of those treaties.

All which is most humbly submitted to your Majesty's royal wisdom.

GEO. LEE, G. PAUL, D. RYDER, W. MURRAY.
January 18, 1753.

1755. Warrant to the Lord Chancellor to seal two commissions to capture pirates.
—*Add. MSS.* 36124, f. 143.¹

GEORGE R.

Our will and pleasure is that you forthwith cause our great seal of Great Britain to be affixed to two Instruments bearing date with these presents, containing our commissions to Norton Hutchinson, commander of the ship *Carnarvon*, burthen four hundred and ninety nine tons, and

¹ There are several others in the same volume. Though not so described, the ships evidently belonged to the East India Company.

carrying twenty six guns and ninety nine men, and to Josiah Hindman, commander of the ship Stormont, burthen four hundred and ninety nine tons, and carrying twenty six guns and ninety nine men, authorizing and empowering them, or any others the commanders of the said ships for the time being to apprehend, seize, and secure all pyrates, free booters, and sea rovers, together with their ships and vessels, goods and merchandizes, which they shall meet with in any of the ports or places, or upon any of the coasts or seas of India, or in any other seas whatsoever. And for so doing this shall be your warrant. Given at our court at Kensington, the twenty second day of October, 1755, in the twenty ninth year of our reign.

1756. Licence for an English ship to carry tobacco from the American colonies to Bordeaux.—*S.P. Dom. Naval* 140.

George the Second, by the grace of God of Great Britain, France, and Ireland, King, Defender of the Faith, and so forth, To all Admirals, Vice Admirals, captains, commanders of our ships of war or privateers, governors of our forts and castles, customers, comptrollers, searchers, and to all and singular our officers, civil and military, our ministers, and loving subjects to whom it may concern, Greeting ; Our will and pleasure is, and We do hereby strictly charge and require you, as We do likewise pray and desire the officers and ministers of all Princes and States in amity with us, to permit and suffer the following English ship, that is to say the ship called the Marion

of Glasgow, being British built, burthen one hundred and fifty tons, or thereabouts, carrying twelve men, whereof Alexander Morison is master, laden with two hundred hogsheads of tobacco, of the growth and manufacture of our plantations in America, to sail from the port of Glasgow in Scotland to the port of Bourdeaux in France, and to return from thence directly to some port of Great Britain without any lett, hindrance, or molestation whatsoever, but on the contrary affording the said ship all such aid and assistance as may be necessary ; Provided nevertheless that the said ship do not carry any arms, offensive or defensive, ordnance, ordnance stores, powder, match, bullets, pitch, tar, hemp, masts, cordage, iron, lead, saltpetre, horses, saddles, holsters, or other utensils or habiliments of war, or any other contraband goods, to or for any port or place belonging to the Crown of France, nor trade in any manner whatsoever for or in the forementioned goods and merchandizes ; Provided also that the said ship shall not, in her outward bound voyage, be laden with any goods, wares, or merchandizes, other than tobacco, of the growth product and manufacture of our plantations in America, nor in her homeward bound voyage, be laden with any goods, wares, or merchandizes whatsoever ; Provided also that the said ship shall not in her outward or homeward bound voyage take on board or carry any passengers whatsoever ; Provided also that security has or shall be given by the master of the said ship, and two other substantial persons, before her departure out of the said port, to our principal officers of our said port, in the penalty of two thousand pounds, with condition for the due performance of the respective terms,

provisoos, conditions, and restrictions in this our pass contained ; Of the taking of which security a certificate shall be had from the said principal officers, or some of them. And we do declare that this our pass shall continue for the space of three months and no longer. Given at our court at . . . the . . . day of . . . one thousand seven hundred and fifty six, in the . . . year of our reign.¹

1756. Extract from a letter of Burgomaster Hop to his namesake, the Dutch envoy in England, as to the danger England runs in violating the treaty rule of 'free ship, free goods.'—*S.P. Foreign, Foreign Ministers in England* 27, 5th April.

. . . Si les Anglois nous font des chicannes par rapport à nos vaisseaux marchands, je ne sais si ils trouveront leur compte ; puisque cela pourroit lier nos gens plus étroitement à la France. Outre cela ils se brouilleront avec toutes les nations commercantes qui ont des traités² de 'vry ship vry goet.' . . .

¹ These passes were by Order in Council directed to be under the great seal. The above is the form attached to the Order. They were frequently issued, both in this and subsequent wars.

² In a letter of 25th May following from the same to the same the writer points out that the rule of 'vry ship vry goet' is laid down in Arts. 3, 6, 7, and 8 of the treaty with Holland of 1674 ; in Art. 16 of the treaty with Denmark of 1669 ; in Art. 23 of the treaty with Portugal of 1654 ; and in Arts. 21, 22, 23, and 26 of the treaty with Spain of 1667.

1756. Commission to the Lords of the Admiralty to issue letters of marque against France.—*Adm. Ct. Letter of Marque Declarations* 5, f. 5.

GEORGE R.

George the Second by the grace of God King of Great Britain France and Ireland, Defender of the Faith &c, To our High Admiral of Great Britain and Ireland &c for the time being And to our Right Trusty and well beloved councillor George Lord Anson, Our Trusty and well beloved William Ponsonby Esquire, commonly called Lord Viscount Duncannon, Thomas Villiers Esquire, Sir William Rowley, Knight of the Bath, Edward Boscawen Esquire, Our Right Trusty and well beloved cousin John Lord Viscount Bateman of our Kingdom of Ireland, our trusty and well beloved Richard Edgecumbe Esquire, Our Commissioners for executing the office of our High Admiral of Great Britain and Ireland &c, and to the Commissioners for executing the said office for the time being, Greeting : Whereas We, by our declaration of the seventeenth day of May in the year of our Lord one thousand seven hundred and fifty six, for the reasons therein contained, have declared war against France ; These are therefore to will and require you, and by virtue of these presents We do authorise you, Our High Admiral of Great Britain and Ireland &c for the time being, and you Our said Commissioners for executing the office of our High Admiral of Great Britain and Ireland &c, and the Commissioners for executing the said office for the time being, or any three or more of you, to issue forth and grant your commissions to any of our loving

subjects, or others whom you, our High Admiral aforesaid, or you our said Commissioners for executing the said office, and the Commissioners for executing the same for the time being, shall deem fitly qualified in that behalf for the apprehending, seizing, and taking the ships, vessels, and goods belonging to France, or the vassals and subjects of the French king, or others inhabiting within any of his countries, territories, and dominions, and such other ships vessels and goods as are or shall be liable to confiscation pursuant to the respective treaties between Us and other Princes, States, and Potentates; And to bring the same to judgment in our High Court of Admiralty of England, or such other court of Admiralty as shall be lawfully authorised in that behalf, for proceedings and adjudication and condemnation to be therefore had according to the course of the Admiralty and laws of nations; With clauses in the said respective commissions to be inserted that, the same being so adjudged and condemned, it shall and may be lawful for the merchants and others to whom such respective commissions shall be granted to sell and dispose of such ships, vessels, and goods so adjudged and condemned in such sort and manner as by the course of Admiralty and usages in such like cases hath been accustomed; And you are to observe all such Articles and Orders touching the premises as are or shall be resolved upon by Ourselves, and issued under our signet and sign manual, and delivered unto you, to remain with you upon Record for your better direction in those cases; Provided always that before any such commission issue forth security be given upon every such commission as hath been usual in such cases. In Witness whereof we have caused our Great

Seal of Great Britain to be affixed to these presents
Given at our Court at Kensington the fourth
day of June in the year of our Lord one thousand
seven hundred and fifty six and in the twenty
ninth year of our reign.

1756. Commission to command a ship¹ of
the French Compagnie des Indes.—
Adm. Ct. Prize Papers 184, Le Duc
d'Aquitaine.

De Par le Roy et la Compagnie des Indes.

Nous, René Magon, Directeur de la Compagnie des Indes, Commandant General des Isles de France, de Bourbon, President du Conseil Superieur y etablis audit Conseil, A tous ceux qui cest presente lettre verront, Salut, avons donné commission au St Jean Baptiste L'Esquelin, capitaine commandant le vaisseau, Le Duc d'Aquitaine, du port de douze cent tonneaux, armé en guerre, et marchandises, et de quatre cent cinquante hommes d'equipage, et monté de cinquante canons, pour naviguer dans toutes les meres, tant en deça qu'en dela du Cap de Bonne Esperance, et se rendre en France. Luy recommandant en cas d'attaque de repousser la force par la force. A ces causes Prions et Requerons tous les amies, allies, et confederées de la Couronne de France, tous capitaines de sa Majesté enjoignons à tous ceux Commandants les Vaisseaux de la Compagnie de laisser passer surement et librement ledit Sieur Jean Baptiste L'Esquelin et sondit vaisseau, Le Duc d'Aquitaine, et sondit Equipage sans lui donner ny souffrir lui estre fait aucun trouble ny empeachment, mais au contraire de lui donner tous secours et faveurs dont il aura besoin. En temoin de quoy nous avons signé ces presents et fait contresigné par le Secretaire du Conseil, qui y a apposé le Sceau des Armes de la Compagnie des Indes. Fait et aresté en

¹ She had a letter of marque as well.

la Chambre du Conseil au Port Louis, Isle de France, ce
2 Aoust, mil sept cent cinquante six.

MAGON (*and seven others*).

1757. Report of law officers and civilians as
to the legality of a proposed Instruction
to privateers not to seize ships and goods
of enemies other than the French, having
regard to the prize Act,—*S.P. Dom.*
Naval 138, 3rd May.

The opinion of the law officers and civilians having
been asked upon this, amongst other matters, the answer
is as follows :

Whether his Majesty may not lawfully, with
the advice of his Privy Council, give an Additional
Instruction to all captains of private ships of
war not to seize or detain the ships of any other
nation than those belonging to the French king
or his subjects, with whom his Majesty is actually
at war ?

And we are of opinion that his Majesty, in
general, cannot ; for, by an Act of Parliament
passed in the 29th year of his Majesty's reign, the
Lord High Admiral, or commissioners of the
Admiralty, are obliged to grant to any owner
of a vessel requiring a letter of marque a com-
mission for attacking, surprizing, seizing, and
taking any ship or vessel, goods, ammunition,
arms, stores of war, or merchandize belonging
to or possessed by any of his Majesty's enemies.
And therefore, if his Majesty was to order all
captains of private ships of war not to seize or
detain the ships of any other nation than those
belonging to the French king or his subjects, his

Majesty, we apprehend, would circumscribe the authority given by Parliament to attack, surprize, seize, and take generally any goods belonging to the French.

But we are of opinion that such an Instruction may be lawfully, and consistently with the Act of Parliament given to seize or detain any ships and vessels of such nations as are entitled to the privilege of carrying enemies' goods by particular treaties with his Majesty.

GEO. HAY, RT. HENLEY, C. YORKE,
JNO. BETTESWORTH.

1758. Holdernesse¹ to Yorke,² as to the Dutch carrying on the colonial trade of the French.—*S.P. Foreign, Holland* 481, 21st July.³

. . . I have enlarged the more upon this point, as I could wish that it were better understood upon the Changes of Rotterdam and Amsterdam, as I am convinced that they serve more to keep up the clamour against the English than other points of a more difficult nature—I mean

¹ Robert, Earl of Holdernesse, Secretary of State.

² General Joseph Yorke, afterwards Baron Dover, British minister at the Hague.

³ This is an extract from a long and interesting letter describing the character of the Dutch trade, the necessity for stopping it, and the baselessness of their complaints. And Cf. Yorke to Holdernesse, 1st Aug. 1758, *Ibidem*, stating that the king is determined to prevent the trade being carried on by other powers under specious pretences of neutrality, and not to let the chicane of words be worked up into a permission to carry on a trade with the enemy, which, though not enumerated as a specifick article of contraband, becomes so to all intents and purposes by particular circumstances.

the proper bounds that ought and must be set between interrupting the real fair trade of the Dutch, and suffering them to carry on the trade of the enemy in a manner that passes the bounds of the neutrality they profess. And this brings me to the last article I am to treat of upon this subject ; I mean the visiting of Dutch ships at sea, and effectually preventing them from supplying the French colonies with necessaries, and carrying on for them a trade which they cannot support of themselves in time of war, and to which the Dutch are not admitted in time of peace. This is a point of real importance to the King's service, and of so great consequence that I am persuaded his Majesty will never be induced to desist from his just pretension. . . .

1758. Certificate by Prince de Galitzin that goods captured¹ in a ship of Dantzic belonged, partly to the Empress of Russia personally, and partly to her subjects.—*Adm. Ct. Prize Papers* 188, L'Eté.

Alexander Prince de Galitzin, Chambérlain to her Imperial Majesty of all Russia, and her envoy extraordinary at the court of his Britannick Majesty, do certify and declare by these presents that the schedule joyned hereunto of the Prussian and neutral property in the Dantzic ship called L'Eté, master Johan Havemeister, bound from Rouan for St. Petersburg, is intirely conform to the specifications sent to me thereof by special command of my Imperial Mistress, with express

¹ By the Clive, privateer.

orders directed to me to claim and demand the effects contained in the foresaid shedule or list as her Majesty's personal property, and that of her subjects and other neutrals. And I do declare upon my honour the said list here annexed to be true and agreeable to the orders of her Imperial Majesty transmitted to me; and that I verily believe and am perfectly assured the property of the effects mentioned therein to be truly as they are set forth. Given under my hand and seal in London, the 21 September 1758.

PR. A. DE GALITZIN.

The schedule contains 17 items or classes of goods belonging to different persons; a toilet glass and curiosities for the Empress, 5 cases of goods for his Excellency Chamberlain Shuvaloff, and other goods for officials and others in Russia.

1759. Sentence, condemning La Mignonne as prize.—*Adm. Ct. Prize Sentences* 40, No. 115.

. . . Therefore we Sir Thomas Salusbury . . . do hereby pronounce, decree, and declare that the said ship La Mignone and her tackle, apparel, and furniture, and the goods therein were rightly and duly taken and seized by His Majesty's said ships of war the *Æolus*, whereof John Elliott, esquire, was commander, and the *Isis*, whereof Edward Wheeler, esquire, was commander, and the officers, mariners, and others then being in the service of the said ships; And that the said ship La Mignone, her tackle, apparel, and furniture, and the goods taken therein, did at the time of the capture and seizure thereof, as far as appears to us, belong to the French king and his vassalls

or subjects, enemies of the crown of Great Britain, and as such ought to be accounted and reputed lyable and subject to confiscation, and to be adjudged and condemned as and for good and lawfull prize ; And we do also pronounce, decree, and declare that the said La Mignone was and is a French ship of war, and had a commission on board from the French King to act as such ; and that she was taken in fight by His Majesty's said ships of war the *Æolus*, whereof the said John Elliott was commander, and the *Isis*, whereof Edward Wheeler, Esquire, was commander ; And that the said French ship of war La Mignone had alive and on board her, at the beginning of the engagement between them, one hundred and thirty eight men ; And we so adjudge and condemn the said ship, her tackle, apparel, and furniture, and the goods therein taken, as and for good and lawful prize, as being a French ship of war, and goods of the enemies of the crown of Great Britain, or otherwise liable to confiscation, by this our definitive sentence, or final decree, which we read and promulgate by these presents.¹

G. Hay.

THO. SALUSBURY.

1759. Correspondence touching English seamen on board the *Lissa*, a Prussian privateer, taken out of her by force.—*S.P. Foreign, Prussia*, 74.

Captain Clive, H.M.S. *Rose*, writes on 27th Aug. 1759 to Andrew Mitchell, the English minister at Berlin,

¹ Sentences are now in English.

enclosing a copy of the instructions¹ under which he acted, and in order, as he states, to prevent a bad impression being made at Berlin by misrepresentation of the facts, which were as follows :

. . . . On Thursday, the 23rd, in the morning, I went on board the privateer, and desired the lieutenant, (who commanded), to turn up all hands, which with a little hesitation he directed to be done. In my examination of the Englishmen on board, many of them applied to me as above I have informed you ; and one man in particular acquainted me that he had deserted from His Majesty's ship the Elizabeth, and was willing to surrender himself to his Majesty's clemency. I was informed of several men, who were under confinement between decks ; upon which I desired the lieutenant to order them up, that I might see them. To this he replied that he could not release them without the consent of his captain. I asked him if he was afraid of their running away, that he might not have sentrys enough to attend them. However, on my offering to go down myself, he ordered them up. They proved to be the boatswain, gunner, and carpenter ; and they also complained of bad usage from the first and third lieutenants and applied to me for redress. After this I told the lieutenant that I must insist upon these men's being discharged. He pretty hastily replied that

¹ Art. 45. When he meets with any foreign ship or vessel, he is to send a commission officer to enquire if any seamen, who are his Majesty's subjects, be on board her, and to demand all such, obliging their masters to pay them their wages to that day. But this is to be done with civil and friendly behaviour on part of his Majesty's officers, who are to be very careful not to offer any violence or ill treatment to the subjects of his Majesty's friends or allies.

he would not suffer a man to go over the side ; and to support this resolution sentrys were placed, with bayonets fixed, on the quarter deck and gangway. I ordered those who were willing into the boat ; but they could not effect it without danger of their lives. Nevertheless two, at the hazard of their necks, jumped into the boat from the gunwhale. Upon this behaviour I went into the boat and gave the lieutenant to understand that I would shortly return, and bring with me more powerful rhetoric. As soon as the tyde gave us leave, I accordingly came alongside with the *Rose*, and informed the lieutenant through a trumpet that I was come to demand his delivery up of such of his Britannic Majesty's subjects as were willing to serve him, and such as had applyd to me for protection. But just before this I received Mr. Caine's last epistle by the hands of Mr. Talbot ; to which I returned a verbal message to the following effect, viz. that I was now determined to take on board the men in dispute, as I was convinced it was my duty to do it ; that I would answer for their being forthcoming, if hereafter I should by proper authority be required to re-deliver them, or if Colonel Parker, whom I should take an opportunity to discourse with, could convince me that I had acted imprudently. With regard to the insinuation of the privateer's lying under the cannon of Embden, it was absolutely absurd and untrue, for I am positive she was not within two English leagues of a Prussian gun.

To proceed in my story. The lieutenant refused to comply with my demand, by saying he could not, without his captain's consent. I then gave him to understand that I would fire into him, and called the men, (already at quarters),

to stand by their guns. Upon hearing this, he called out, and desired me to send a boat on board; the which I immediately did, with directions to my lieutenant to bring on board every Englishman that was willing to come. This was speedily performed, for upwards of twenty men jumped into the boat, the moment she got alongside. They are now on board, and I have wrote the true state of my proceedings in this affair to the Lords of the Admiralty, whose further directions I shall expect, either here or in England. I shall only observe one thing more and conclude; and that is this, viz. that it was not my intention to have fired into the privateer, as he made no resistance; but I would have anchored close to her, and sheered alongside, which would have given the men an opportunity of coming on board us.

This is enclosed in a letter from Andrew Mitchell, the English envoy in Prussia, to the Earl of Holdernessee, in which he states that he is endeavouring to keep the matter from reaching Frederick's ears. There are also enclosed the letters that passed between Clive and Caine, the captain of the Lissa. The latter denied that he had any English deserters on board, and added that he should meet force with force. Caine tried, but without success, to induce the English commandant of Embden to arrange the affair. A long statement signed by the officers of the Lissa follows. From their names, they appear to have been English, but they are described as burghers of Embden. After taking or receiving the men out of the Lissa Caine wrote the following letter, dated 4th Sept. to Eichel, the Prussian minister:

May it please your Excellency,

At a time when his Majesty's service required the attention and wisdom of his ministers I should not have disturbed your Excellency, had not

the insult offered to the royal Prussian flag in the port of Embden compelled me to it. I had the honour of transmitting to your Excellency the 28th of last month a minute relation in English of the violence offered to his Majesty's ship the *Lissa*. As I could not possibly by that time procure an attested translation of it, I take the liberty of presenting one to your Excellency, since that most unjustifiable act of my very officers, (because they are not honoured with his Majesty's commission or warrants to act in their station), have been threatened to be forced from his Majesty's service.

As I looked upon the commandant of this place to be governor of the port, as well as the town, and that he held it for his Prussian Majesty, I thought [it] my duty to apply to him, and expected he would interpose his authority against such a breach of publick faith ; but I am sorry to say he seems to think this an English town, because it has an English garrison.

I need not observe to your Excellency how prejudicial this affair has been to his Majesty's service, and to the proprietors of the *Lissa*, who were prompted to equip an armament at the expense of £10,000 sterling, more by their zeal for his Majesty's service, than by any private views. I am detained here for want of seamen, and rendered incapable of distressing his Majesty's enemies. His Majesty's interest obliges me again to apply to your Excellency. I am informed that the enemy intend to try to avail themselves of an artifice, which, (as no regard was ever paid to it by any maritime powers), can only tend to delay the condemnation of the Swedish prize, which I had the honour of informing your Excellency I had brought into Embden. She

was bound from Hamburg to Stockholm, and if my intelligence be just, some of the inhabitants of Hamburg have been prevailed upon to claim the effects, as their property, though they must be sensible that all effects found in an enemy's ship are confiscated ; otherwise it would be in vain to equip armaments, since under the cover of subjects of the neutral powers, the enemies might carry on what commerce they pleased in defiance of his Majesty's arms.

1760. Letter of marque.—*Adm. Ct. Letter of Marque Declarations* 12, f. 1.

George the Second, by the grace of God King of Great Britain, France, and Ireland, Defender of the Faith, To all people to whom these presents shall come, Greeting. Whereas Mr. Lawrence Boyd of London, merchant, a principal owner of the vessel called the Tryal, hath by writing requested our commissioners for executing the office of our High Admiral of Great Britain and Ireland &c, that we would cause to be issued forth a commission or letter of marque unto Birchman Pillans, whom he hath nominated to be commander of the said vessel ; And whereas our said commissioners have thereupon issued a warrant under their hands and the seal of office willing and requiring the judge of our high court of Admiralty to cause a commission or letter of marque to be issued out of the said court unto the said Birchman Pillans to set forth in warlike manner the said vessel called the Tryal, of the burthen of about one hundred and seventy tons, whereof the said Birchman Pillans is commander ; And whereas the said Birchman Pillans hath

given sufficient bail, with sureties, to us in our said high court of Admiralty, according to the effect and form set down in our Instructions, a copy whereof is given to the said Captain Birchman Pillans; Know ye therefore that we do by these presents grant commission to and do license and authorize the said Birchman Pillans to set forth in warlike manner the said ship called the *Tryal*, being a square sterned [ship], with two masts, of the burthen of about one hundred and seventy tons,¹ having twelve carriage guns, each carrying shot of six pounds weight, and eighteen swivel guns, and belonging to the port of London, and whereof the aforesaid Lawrence Boyd, Joseph Robertson, and Haughten Wills of London, merchants, were principal owners, and navigated with sixty men, and by and with such ship or vessel, or with the crew thereof to attack, surprize, seize, and take any place or fortress upon the land, or any ship or vessel, goods, ammunition, arms, stores of war, or merchandize, belonging to or possessed by any of his Majesty's enemys upon the land, or in any sea, haven, or river, excepting only within the harbours or roads of princes and states in amity with his Majesty, and such other ships, vessels, and goods as are or shall be liable to confiscation pursuant to the respective treaties between us and other princes, states, and potentates, and to bring the same to such port as shall be most convenient, in order to have them legally adjudged in our said high court of Admiralty of England, or before the judges of such other Admiralty court within our dominions as shall be lawfully authorized: which, being

¹ Some of the 'letters of marque' in the same volume were of 500 tons.

condemned, it shall and may be lawful to and for the said Birchman Pillans to sell and dispose of such ships, vessels, and goods so adjudged and condemned in such sort and manner as by the course of Admiralty hath been accustomed, except in such cases where it is otherwise directed by our said Instructions. Provided that nothing be done by the said Birchman Pillans, or any of his officers, mariners, and company, contrary to the true meaning of our Instructions delivered unto him herewith, but that the said Instructions, and each and every of them, as far as they or any of them are therein concerned, shall in all particulars be well and duely performed and observed. And we pray and desire all kings, princes, potentates, states, and republicks, being our friends and allies, and all others to whom it shall appertain, to give the said Birchman Pillans all aid, assistance, and succour, in their ports, with his said ship, company, and prizes, without doing or suffering to be done to him any wrong, trouble, or hindrance; we offering to do the like when we shall be thereunto desired. And we will and require all our officers whatsoever to give him succour and assistance as occasion shall require. In witness whereof we have caused the great seal of our high court of Admiralty of England to be hereunto affixed. Given at London, the twenty sixth day of June, in the year of our Lord one thousand seven hundred and sixty, and in the thirty fourth year of our reign.

Upon the issue of this letter of marque a deposition was made in court describing the ship as she is here described, together with further particulars as to her armament, ammunition, and stores, and giving the

names of her gunner, boatswain, carpenter, and surgeon. The two sureties for the ship's good behaviour, each in a sum of £1500 are 'justified,' i.e. sworn to be worth the sum. The form of a letter of marque of 1707 will be found in *Adm. Ct. Letter of Marque Declarations* 13, f. 2; it is very similar, except that it recites the Instructions to privateers at greater length.

1760. Lords of the Admiralty to Salusbury;¹ as to the seizure and detention of Spanish ships having on board goods alleged to be French; with directions that the treaty of 1667 is to be observed. — *Adm. Sec. Out Letters* 1056, f. 288.

Whereas we have received a letter dated the 1st of this month from Mr. Pitt, one of his Majesty's principal secretaries of State containing as follows, to wit:

'The Condé de Fuentes, ambassador extraordinary and plenipotentiary from his Catholick Majesty, having in his memorial of the 20th of June among other things represented that the courts at Doctors Commons, Gibraltar, and in America have, contrary to treaties, openly protected English privatiers, and shewn no regard to the passports, or any of the sea papers with which the captains of Spanish vessells have been furnished, and have always adjudged the detention of ships to be just, from the single pretence of the cargoes belonging to the French, and that the inferior courts have immediately and without distinction passed sentence in favor of the English,

¹ Appointed judge of the Admiralty 19th Dec. 1751.

I am commanded to signify to your Lordships the King's pleasure that you do forthwith cause the strictest enquiry to be made whether there is any and what foundation for the representation above mentioned, and that you do give the strongest directions, as far as shall be consistent with law, to the judges of all the courts of Admiralty, that they do, without the least unnecessary delay, give immediate justice to any Spanish ships brought before them; and that in all their judgments they have the strictest regard to the stipulations and true meaning of the treaty of 1667 subsisting between the crowns of Great Britain and Spain, and to his Majesty's orders, and instructions founded thereon to all ships and privatiers.'

We do hereby strictly require and direct you to comply with his Majesty's pleasure by reporting to us, as soon as possible, whether there is any and what foundation for the aforesaid representation; and also by proceeding in respect to any Spanish ships brought before you very carefully and punctually in the manner expressed in the foregoing recital of Mr. Pitt's letter. Given under our hands, the 6th of August 1760.

*[Signed by four of the Lords, and addressed to Sir Thomas Salusbury.]*¹

¹ Similar letters were sent to the judge of the Jamaica and other Admiralty courts.

1762. Spanish prize regulation; enemy goods in a friends' ship to be detained until it appears how the country to which the ship belongs treat Spanish goods in a like case—*S.P. Foreign, Foreign Ministers in England*, 27.¹

Art. 14. Les vaisseaux à bord desquels se trouveront des marchandises et effets appartenants à des ennemis seront conduits de même à un port de mes Etats, ou les effets seront déclarés de bonne prise, vu qu' encore qu'il y ait quelque Puissance, qui en vertu des traités jouit de l'immunité de son pavillon, il est nécessaire, pour que je la lui accorde, qu'elle me fasse conster que les ennemis meme de la nation desquels ils sout les effets ne la lui refusent pas, et qu'ils l'observent, d'autant que les Anglois ont exigé cette declaration pour avouer l'immunité du pavillon Espagnol, pendant que l'Espagne est restée neutre en leur guerre avec la France.

[Dated 1st Feb. 1762.]

¹ This is enclosed in the letter which follows in the text, in which are also enclosed copies of the orders of 7th April 1743 (*supra*, p. 296). The law officers (Paul, Ryder, and Murray) reported against the proposal, for the reasons appearing below (p. 397) in Murray's and Lord Hardwicke's letters, and it was rejected. The following is submitted as a free translation of the 'improper' and 'insidious' regulation in the text; the 'certain Powers' therein mentioned being, apparently, Holland, and 'the nation to which the goods belong,' England:—

The vessels on board of which are found merchandise and goods belonging to enemies will, in the same way, be taken to a port in my dominions where the goods will be declared good prize; considering that there is still a certain Power, which in virtue of treaties enjoys the freedom of its flag, it is necessary, in order that I may render that freedom to it, that it should prove to me that the enemies of the

1762. Boreel to Bute,¹ pointing out that unless Spanish goods in Dutch ships are made free from seizure, English goods will be liable to seizure by Spain. —*S.P. Foreign, Foreign Ministers in England*, 27.

Monsieur Boreel a l'honneur d'envoyer à S.E. my lord Bute une copie de la déclaration que Sa Majesté Catholique a fait publier au sujet de la navigation et du commerce des vaisseaux neutres pendant le cours de la présent guerre. Son Excellence verra par cet Article que les effets Anglois ne seront point en sureté sur des vaisseaux Hollandois, à moins que Sa Majesté Britannique ne donne des ordres pour que les effets Espagnols, qui pourroient se trouver à bord des dits vaisseaux, ne soient point sujets à etre confisqués par ses officiers. Feu Sa Majesté George II donna des pareils ordres au mois d'Avril de l'année 1743, comme en font foi les copies ci-jointes. Il paroît qu'il seroit aussi avantageux aux sujets du Roi qu'à ceux de la République que ces ordres fussent renouvelés à present.

[Dated 22nd April 1762.²]

nation to which the goods belong do not deny it the freedom, and that have regard to it ; inasmuch as the English have exacted such a declaration before allowing the freedom of the Spanish flag, whilst Spain remains neutral during their war.

¹ The former Dutch minister in England, the latter Secretary of State.

² In the original 1752 ; evidently a mistake.

1762. Murray to [Bute?]; as to the Dutch request that the rule of 'free ships free goods' should be applied to their ships employed in carrying on for the French their colonial trade, and as to the Spanish prize rule last printed.—*S.P. Foreign, Foreign Ministers in England*, 27.

. . . I think the order desired by the Dutch insidious, and the more improper as it proceeds upon a kind of reciprocity with Spain. I am of opinion that it should not be granted. I have thrown upon paper a sketch of the sense of an answer which I send your Lordship inclosed. If you approve the substance, you will change the form as you think fit. . . .

[Dated 1st May 1762.]

Hardwicke¹ to Bute upon the same subject :

. . . As for the Dutch ambassador's demand, so far as it proceeds from the suggestion of the court of Spain, I look upon it as insidious. It refers to what was done in the last war, and passes over what has been practiced and legally determined in this. In the last war these matters had not been so fully and particularly considered, and from thence, upon the breaking out of the present war, the French took encouragement to carry on all their American trade in Dutch bottoms. The two little islands or rocks of St

¹ Philip Earl of Hardwicke, late Chancellor.

Eustatia and Curacoa were made to cover almost all the produce of the French sugar colonies. This produced many causes before the Lords Commissioners of Appeals in prize causes ; and upon solemn consideration of the marine treaty of 1674 it was adjudged by several decisions that the rule of 'free ships free goods' did not extend to the carrying [on] of trade to the American colonies of France, (and the same rule will now hold for Spain), because that was a trade which the Dutch could not carry on in time of peace ; and the treaty of 1674 was intended to preserve to them in time of war between England and any other power such trade as they had in time of peace, but not to open to them a new trade, which they could not carry on in time of peace ; and that such trading for France to the French American colonies was a breach of the States' neutral duty. I suspect this is the point aimed at by the court of Spain, in order to cover, in some shape or other, the trade to their West Indies ; for, as to Europe, the Dutch carrying trade has never been molested, or if it has, justice has allways been done them by the Court of Appeals. I beg leave therefore to submit to your Lordship my humble opinion that it is not desirable to make any particular declaration in consequence of this memorial, but to give only a general answer, that his Majesty will faithfully observe his treaties.

[Dated 7th May 1762.]

1767. Sentence condemning, as an Admiralty droit, an enemy ship captured¹ by an East Indiaman without a commission.—*Adm. Ct. Prize Papers* 206, L'Indien.

. . . Therefore we, Andrew Coltee Ducarel, surrogate of the Right Worshipfull Sir Thomas Salusbury, knight, doctor of laws, the judge aforesaid . . . [*in common form*] . . . do hereby pronounce, decree and declare that the said ship L'Indien . . . and her tackle, apparel, and furniture, and all and singular the goods, wares, and merchandizes laden therein were taken and seized by the said East India Company's armed ship the Revenge, whereof the said William James, Esquire, was commander, as being the ship and goods of enemies, and were afterwards by him carried into the port of Fort William in the kingdom of Bengall in the East Indies, as droits and perquisites of the Admiralty of England, and that the said ship L'Indien, her tackle, apparel, and furniture, and all and singular the goods, wares, and merchandizes taken and seized therein as aforesaid, did at the time of the said capture and seizure thereof belong to the French king, his vassals or subjects or others inhabiting within his countries, territories, or dominions, enemies of the Crown of Great Britain, and therefore ought to be accounted and reputed and liable and subject to confiscation, and to be condemned as and for lawful prize, and to be adjudged to our sovereign lord the King as droits and perquisites of the Admiralty of England;

¹ In the late war.

And we do accordingly condemn and adjudge the said ship L'Indien, her tackle, apparel, and furniture, and all and singular the goods, wares, and merchandizes therein taken as aforesaid, as and for good and lawful prize to our sovereign lord the King as droits and perquisites of the Admiralty of England, as being a ship and goods of the enemies of the Crown of Great Britain, or otherwise liable to confiscation by this our definitive sentence or final decree which we read and promulgate by these presents.

Geo. Harris.

AND. COLTEE DUCAREL,
surrogate.

1768. Warrant for delivery to the East India Company of a French prize captured by one of their ships without commission.—*Adm. Ct. Prize Papers* 206.¹

GEORGE R.

George the Third by the grace of God king of Great Britain France and Ireland, Defender of the faith, and so forth, To all to whom these presents shall come Greeting : Whereas the United Company of Merchants of England trading to the East Indies have humbly represented unto Us, and We have been otherwise made acquainted that an armed ship belonging to the said Company named the Revenge, under the command of William James Esquire, (at that time commander in chief of all their ships and vessels stationed at Bombay), did in the course of her voyage from Bombay to Bengall in November 1756, very soon after the declaration of war was known in those

¹ See the last sentence.

parts, attack, seize, and take a French ship called the *Indien*, carrying twenty four guns and two hundred and twenty five men, laden chiefly with military and marine stores for the service of the enemy at Mauritius, at which place the French ships and forces were then assembled in order to attack the said Company's settlements. And whereas the said armed ship called the *Revenge*, not having at the time of the said capture of the *Indien* any letter of marque or commission for war, proper proceedings have been instituted in Our High Court of Admiralty, and the said capture has been condemned by the sentence of Our said court as a droit of Admiralty, and as such becomes Our property ; Whereby the said Company of Merchants aforesaid are totally deprived of any benefit or advantage which might otherwise accrue to them for the said capture, unless We are graciously pleased, in consideration of the special circumstances of their case, to extend Our Royal grace and favor unto them in the premises. Now Know ye that we, having taken the said matter into Our Royal consideration, are graciously pleased to give and grant, and by these presents do give and grant unto the said Company of Merchants of England trading to the East Indies Our said prize, the said French ship called the *Indien*, with its cargo and all Our right, interest, and property thereunto and therein ; To take, receive, have, hold, possess, and enjoy the same, to them the said Company of merchants of England trading to the East Indies to and for their own proper use and advantage, without any account to be thereupon rendered unto Us. And Our Will and pleasure is, And We do hereby direct, order, and command, that the said prize ship and cargo shall accordingly be

INSTRUCTIONS FOR PRIVATEERS

In order to save space, and to shew the continuity of the series, the Instructions for privateers issued between 1649 and 1780 are here collected together. Some of them are lengthy, and most contain Articles that recur over and over again, either in the same or slightly different words. All that have been found are mentioned, but Articles that are merely repetitions of others occurring in earlier Instructions are not printed again; any new Article, or new feature, is either printed in full or noted. The Instructions of 1385,¹ 1589,² and 1625,³ having already been printed by the Society, are not reproduced. The Instructions in vol. i, pp. 197, 218, 416 may be compared with those printed below, but they hardly belong to the same series. The first are rather directions to the Cinque Ports Admiralty court as to procedure than Instructions to privateers; the second are addressed to bearers of commissions to capture 'pirates'; and the last to commanders of the king's ships. Probably earlier Instructions than those of 1585 were issued, but the present writer has found none. After the revolution of 1688 some of the matter contained in the Instructions was embodied in the prize Acts which then began to be passed; but Instructions continued to be issued by Order in Council. Latterly they were printed, and every ship bearing a letter of marque had a copy. The earliest printed copy that has been found is of the year 1756.

¹ *The Spanish War*, p. 36; summarised vol. i, p. 236.

² Vol. i, p. 252.

³ *Ibidem*, p. 410

upon by force of armes, apprehend, seize, and take, upon the seas, any of the shippes, merchandizes, and goods of such forraigne prince or state, or of any of the subjects of such prince or state, by whom or by whose subjects they have suffered or susteyned such losse or dammage; Provided that such apprehension, seizure, or takeinge be not made upon or within any ports, havens, or roades, belonging to this Commonwealth, and in their possession, except the shippes, merchandizes, and goods of the offenders, which shall be there found. Provided also that no such seizure shall be [made] in the ports, havens, or roades of such prince or state complained of, saveinge the shippes, merchandizes, and goods of the offenders, which shall be there found, in case whereby the league and treatye with that prince or state other seizure in such places shall be excluded.

3. [*Similar to Art. 11 of 1625, except that notice of the ship's force &c. is to be given* 'to the intent that the same may be justly accounted in their charges and expenses in obteyninge their satisfaction.']

4. [*Similar to Art. 6 of 1625.*]

5. Item, That the sayd merchants, owners of shippes, and other persons, their captaines and others employed under them shall bringe, or cause to be brought, into some port or haven of this land¹ all such shippes, merchandizes and

¹ Though this Article was a common form in later Instructions, it was not always adhered to. In 1666 a Dutch prize taken to Gothenburg was condemned by the English Admiralty court. But she was arrested by the Swedish authorities at the instance of her Dutch owners, and an angry remonstrance was made by England. *Harl. MSS.* 1510, f. 650.

goods by them soe apprehended, seized, and taken, together with three or fower of every such shipp's company as shalbe soe apprehended, seized, and taken, as shalbe of most account, whereof the captayne or master and the pylott to be two, to the end they may be examined concerninge the said shippes, merchandizes and goods, or any other matters concerninge the same.

6. [*Similar to Art. 4 of 1625.*]

7. Item that the sayd merchants, owners of shippes, and other persons shall, before the issueinge out of the severall commissions, letters of marque or reprizall, enter into bond with sufficient securitie, as the case shall require, for the performance of [the] three next preceedinge Articles.

8. [*Similar to Art. 5 of 1625.*]

9. Item, That in case any such merchants, owners of shippes, or other persons which shall have obteyned such letters of marque or reprizall, shall by vertue thereof apprehend, seize, or take, and bring to judgment in the sayd court any shippe or shippes, merchandizes, or goods, of a greater value than the losses or dammages by them susteyned amount unto, soe much thereof onely shall be adjudged unto them for lawfull prize as shall countervale and answere their said losses and dammages, and the costs and charges they have been at in such their apprehendeinge, seizeinge, and takeinge, of the same, and in prosecution of the said condemnation; and restitution of the remainder shalbee adjudged and decreed to the proprietors and former owners.

10. [*Similar to Art. 7 of 1625, with the addition : 'saveinge to such parties findeinge themselves agreived thereby their right of appeale, soe as they duely present the same with effect.'*]

11. Item, That it shall be lawfull for any

person of this Commonwealth or any other, either in his owne person to serve, or otherwise bear charge or adventure, or in any sort to further and set forward the said enterprize by vertue of such letters of marque or reprizall granted under the great seale of the said high court of the Admiralty, accordinge to these Articles, and the same being duely prosecuted, they shalbe free and freed under the protection of this State of and from all molestation whatsoever, which otherwise might arise and grow thereby.

12. [*Similar to Art. 9 of 1625.*]

1652. Instructions.—*S.P. Dom. I*, Vol. xxx, p. 17.

Additional Instructions for privateers were issued, on 10th July 1652. They are printed in Navy Records Society, *First Dutch War*, i, 359, and are shortly as follows: 1. No ship of less than 200 tons and 20 guns to have letters of marque, except pinnaces accompanying larger ships. 2. Ships to be sufficiently manned and equipped. 3. They are to aid and rescue other ships. 4. And on special occasions are to obey the orders of Parliament, the Council of State, and the Admirals at sea. 5. All ships and goods adjudged to be prize are to be appraised and inventoried. 6. Discipline; ships are to advise the Council of State where they are, and what captures they have made, and to furnish information useful to the Commonwealth. 7. French fishermen are not to be molested.

1664. Instructions against Holland, 23rd Dec.—*Adm. Sec. In Letters* 5246, f. 84.¹

The eleven Articles of these Instructions are nearly identical with those of 1625 printed in the preceding

¹ Also *Lansd. MSS.* 194, f. 20.

France on 2nd May ; *Ibid.* 228, f. 52. Neither of these are in the *P.C. Register*.

1. [*At the end is added*—or inhabitants within any their respective territories and dominions whatsoever, excepting only within the harbours of princes and states in amity with his Majesty, or in their roads within shot of their cannon.

2. [*The bond required by Art. 2 of 1664 for the bringing in of prizes applies only to captures made on this side the Straits ; prizes are to be brought*] to some port of his Majestie's realme of England or Ireland, as shall be most convenient for them, and otherwise to some other place where his Majesty hath or shall have a court of Admiralty, to bee there adjudged ; or, in case of invincible necessity howsoever otherwise to keepe and secure the same till they can be afterwards fairely and legally adjudged.

3. That, after any such shipp shall be taken and brought into any port, the taker shalbe obliged to bringe assoone as possible may be, and to produce three or foure of the principall of the company, (whereof the master and the pilot to bee alwaies two), of every shipp soe brought into port, before the judge of the Admiralty of England, or his surrogate, or such commissioners as shall bee by him appointed, to bee sworne and examined upon such interrogatories as shall tend to the discovery of the truth touching the interest or propriety of such shipp or shippes, and of the goods and merchandizes found in them. And the taker shalbe further obliged, at the tyme he produceth the company aforesaid to bee examined, to bring and deliver into the hands of the judges of the Admiralty, his surrogate, or the commissioners aforesaid, all such sea briefs,

charterpartys, bills of lading, coquetts, letters, and other documents, as shall bee delivered up or found on board any such shipp ; the said taker, or his chiefe officer, being present, and seeing the said papers delivered up or otherwise found on board at the tyme of the capture, makeing oath that the said papers are brought and delivered in as they were received or taken, without any fraud, subduction, razure, or imbezzlement.

4. [*Same as Art. 4 of 1625 with this addition :*]

And that noe person or persons taken or surprized in any ship or vessell as aforesaid, though knowne to bee of the enemy's party, shall be in cold blood killed, maimed, wounded, or by other torture or cruelty inhumanly treated, contrary to the common usages and just provisions of warr ; otherwise the said commissions to bee voyd to the taker, to all intents and purposes.

5. [*Same as Art. 5 of 1625.*]

6. That the said merchants, commanders of shippes, and others who shall have obtained the said letters of marque or commissions of generall reprizalls, or for private men of warr, shall not doe or attempt any thing against the true meaning of any article or articles, treaty or treaties agreed upon betweene his Majesty and his allies touching the freedome of commerce in tyme of warr, and the authority of passports and certificates under a certaine forme, or some or one of the articles or treaties soe agreed upon betweene his Majesty and any his allies as aforesaid, when produced and shewed by any the subjects and vassalls of the said allies. . . . [*The rest of this Article, and the other Articles, are the same as those of 1625.*]

1666. Instructions against Denmark, 9th May.—*P.C. Register* 59, f. 8.

These are the same as the last. In *Adm. Ct. Letter of Marque Bonds* 228, f. 57, they are dated 30th May.

1672. Instructions against Holland and France, 22nd May.—*P.C. Register* 63,¹ f. 246.

The eleven Articles of these Instructions are similar to those of 1666, except that in Art. 4 the penalty for disobedience, instead of avoidance of the commission, is severe punishment by our court of Admiralty; and in Art. 11 (= Art. 10 of 1666) security in £2000 is required. There is no Article corresponding to Art. 11 of 1666. Art. 10, which is new, is as follows:

10. That those merchants, captaines, and others who shall have the said letters of marque or commissions as aforesaid shall hold and keepe, and are hereby enjoyned to hold and keepe, by all convenience, and upon all occasions, from time to times, a correspondence with our said Lord High Admirall, or with Charles Wren, Thomas Holder, James Hoare, and Richard Brett, Esquires, commissioners deputed and appointed by our said Lord High Admirall, so as from time to time to render and give unto them, or some of them, not only an accompt or intelligence of their captures or proceedings at sea or elsewhere by vertue of their said letters of marque and commissions aforesaid, but also

¹ Also *Adm. Sec. In Letters* 5246, f. 378, under date 8th March 167 $\frac{1}{2}$, and *Adm. Ct. Letter of Marque Bonds* 228, f. 88.

of whatsoever shall occur unto them, or be discovered or declared unto them, or found out by them by examination of or conference with any marriners or passengers of or in the ships or vessells taken, or by any other wayes or meanes whatsoever touching or concerning the designes of the enemy, or any of their fleets, shipps, vessells, or partyes; and of the stations, seas, ports, and places, and of their intents therein, and of what merchants' ships or vessells of the enemyes bound out and home as they shall heare of what else materiall in these cases may arrive to their knowledge, to the end such course may be there-upon taken, and such order given as shall be requisite.

1681. Instructions against Algiers, 14th Dec.
—*Adm. Ct. Letter of Marque Bonds*
228, f. 114.

Art. 2 provides that prizes may be taken 'in case of necessity only to Tangier, or some other place where we shall have a court of Admiralty.' Art. 4 has 'if any of our subjects, borne within our allegiance shall be found to be renegado from their Christian faith, the said renegado be delivered over to the first of his Majestie's men of war he meets with.' The other Articles (there are thirteen in all) are similar to those of 1672, except Arts. 7 and 11, which are as follows:

7. That the merchants, captains, and others who shall have such letters of marque or commissions as aforesaid, shall not weare in their said ships our Union flagg or jack, (which is intended to distinguish our owne ships of warr from all others), at no time, nor upon no pretence whatsoever, unless they be warranted for so doing by an order

of leave under our hands and seale of our lord high Admirall or commissioners of the Admiralty for the time being.

13. That if it happen hereafter that a peace be made betweene us and the said government and people of Algiers, then and in that case the said commission shall immediately become voyd ; and that a clause to this purpose shall be inserted in all such letters of marque and private commissions as hereafter shall be granted.

1689. Instructions for privateers against France, 27th June.—*Adm. Ct. Letter of Marque Declarations* 1, f. 12.¹

Art. 4 is the same as Art. 4 of 1672 except that after 'punished' the words 'by our court of Admiralty' are omitted. In Art. 6, at the end, after 'dominions' are added the words 'their ships, vessells, and goods, and against such other ships as are or shall be liable to confiscation.'² Art. 8 is the same as Art. 8 of 1672, except that after 'grow thereby' are added the words 'in the same manner as any other our subjects ought to be by law in their aiding and assisting us, either in their own persons or otherwise in a lawfull warr against our declared enemyes.' Art. 11 is the same as Art. 11 of 1672 except that bail is to be in £3000, if the crew is over 150 men, and in £1500 if less, and the form of bond is annexed. The other Articles, except Art. 2 printed below, are the same as those of 1672.

2. That the said merchants and others shall bring such ships and goods as they shall so seize and take to such port of this our realme of England

¹ They are not in the *P.C. Register*.

² These words were by an Order of 19th Dec. 1718 directed to be struck out of commissions ; *Adm. Sec. In Letters* 3669.

as shall be most convenient for them, in order to have the same legally adjudged in the high court of Admiralty.

1693. Instructions against France, 2nd May 1693.—*Adm. Ct. Letter of Marque Declarations* 2, f. 101.¹

MARIE R.

1. [*Same as Art. of 1689.*]

2. That the treatys between their Majesties and their allies be punctually observed, that there may be no undue interruption of their commerce.

3. Nevertheless the ships belonging to any prince or state in warr with France, or belonging to Altona, Gluckstadt, Hamburgh, Lubeck, Dantzick, and other citys and places of the Empire, as well on the East sea as on the rivers of the Elb, Weezer, and Eems, although belonging to the king of Sweden, Denmark, or other princes or states as members of the Empire and subject to the advocatories of the Empire, which shall be bound to or coming from France, or any the dominions of the French king, may be taken as prize.²

4. That all ships of any other nation that

¹ The form of a letter of marque under these Instructions is in *Adm. Ct. Letter of Marque Declarations* 3, f. 1. The Instructions are not in *P.C. Register*.

² During the war of 1689 imperial edicts had issued forbidding trade with France, and an Order in Council issued on 17th Oct. 1689 declaring ships from the Hanse towns and towns of the Empire bound to France, together with their cargoes, to be prize, and requiring the Admiralty court to condemn them; *Adm. Sec. In Letters* 5249, f. 48.

are bound to France, or the dominions of the French king from any place in warr with France, or subject to the advocatories of the Empire, or shall come to France bound to any such place, shall be taken as prize, unless they be only in ballast.

5. That all ships carrying any contraband goods to France may be seized also.

6. That all sorts of fireworks and things there-to belonging, as cannon, musquets, mortars, petards, bombs, granados, saucisses, rokkransen[?], carriages, rests, bandaliers, powder, match, saltpetre, bullets, pikes, swords, headpieces, cuirasses, halbards, horses, saddles, holsters, belts, sail-work, rigging, cables, cordage, masts, lead, pitch, tarr, hemp, together with all other equipage that serves for sea or land, laden in Danish ships, and bound to the enemy's country, are accounted contraband goods.

7. That the same goods or merchandizes,¹ laden in the ships belonging to neuter towns, bound to the enemy's country, are to be reputed contraband.

8. [See note 2.]

9. That Danish ships, being furnished with the passports, together with authentick certificates relating to the oaths required by the convention with Denmark, the form of which passports and oaths are hereunto annexed,² may pass freely, except such ships as have not disposed of their whole lading in the first port of France where

¹ The words 'and also corn of all sorts' are here struck out.

² This Article is struck out, with a note, 'struck out by warrant from the Queen.' It stood as follows: 'That corn laden in the ships of any neutrals may be seized, whithersoever it be bound.'

³ See *Adm. Ct. Letter of Marque Declarations* 2, f. 106.

they touched, but together with the remainder of their lading have taken in other goods in that first port of France, and are proceeding towards another place within the territories of the French king with the same, and also except in the cases before mentioned.

10. That the ships belonging to the subjects of Sweden being provided with passports and certificates according to the 12th Article of the treaty betwixt England and Sweden, (which is hereunto annexed),¹ shall not be molested otherwise than as in the said Article is mentioned, or in the cases before expressed ; and that Swedish ships, which shall appear to have set saile out of any Swedish port before the 1st day of May in the year 1693, shall not be detained, in case the master or supra-cargo thereof shall take the like oath as is required by the forme of a Swedish pass comprehended in the said 12th Article.

11. [*Same as Art. 2 of 1689, with this addition :*] unless it be in such cases where it is otherwise provided by the Act of Parliament hereunto annexed, made in the 4th and 5th years² of our reign, intituled, An Act for continuing the Acts for prohibiting all trade and commerce with France, and for the encouragement of privateers.

[*Arts. 12, 13, and 14 are the same as Arts. 3, 4, and 6 of 1689.*]

15. That after such condemnation of any prize, it shall and may be lawfull to and for the said merchants and others to take into their own possession such and so many ships, vessells, goods, and merchandizes as shall be condemned unto them for lawfull prize, to make sale and

¹ See *Adm. Ct. Letter of Marque Declarations* 2, f. 107.

² *Sic.* Semble 4 Will. and Mary, c. 25.

dispose thereof in open markett or otherwise to their best advantage, provided that in such ship or vessell there be no goods or merchandizes of the growth, production or manufacture of the dominions of the French king, and except in all cases where it is otherwise provided by the Act of Parliament hereunto annexed.¹

[*Arts. 16, 17, and 18 are the same as Arts. 8, 9, and 10 of 1689.*]

19. That such merchants, commanders of ships, and others, who shall obtain such letters of marque or commissions as aforesaid shall not wear our colours, commonly called the Union Jack² or pendant on board such ship or vessell by them fitted out in pursuance of such our commission, in company of any our men of warr, or so near any other men of warr belonging to any nation in amity with us, so as to occasion any salute from them, or in or near any port or road whatsoever ; And that two third parts of the whole company of every such ship or vessell so fitted out as aforesaid shall be landsmen, and that they shall and are hereby required to cruize against the French, and not to merchandize, during the continuance of such our commission, without the particular permission of our commissioners for executing the office of Lord High Admirall of England now and for the time being so to doe.

20. That all merchants, commanders, officers, mariners, and others who shall either in their own person serve or bear any charge, or in any sort further or set forward the aforesaid adventure,

¹ Semble, 4 Will. and Mary, c. 25.

² See an Order in Council of 21st June 1695, and Proclamation of 12th July 1699 as to this ; *Adm. Ct. Letter of Marque Declarations* 3, f. 3.

shall and are hereby directed and required, (so far as they or any of them are therein concerned), carefully to observe all and every matter and thing concerning prizes, and the shares, proportions, and rewards of and for the same; which are directed to be observed in the foresaid Act of Parliament annexed, which is also hereby made part of these our Instructions.

21. That all persons who shall violate these Instructions shall be severely punished, and also required to make full reparations to persons injured contrary to these Instructions for all damages they shall susteine by any capture, imbezilment, demurrage, or otherwise.

22. [*Same as Art. 11 of 1689, with similar form of bond.*]

1693. Warrant to the Lords to alter the above Instructions as to corn and contraband, 14th June.—*Adm. Ct. Letter of Marque Declarations 2, f. 110.*¹

MARIE R.

Whereas by our warrant bearing date the 2nd day of May last past Wee directed you to give such orders as should be necessary for the punctual observing and putting in execution certain regulations and instructions, at the same time transmitted to you, to the commanders of our men of warr, and likewise certain instructions for such merchants and others who shall have commissions, or letters of marq, or commissions

¹ *Ibid.*, f. 110. The Lords to Hedges directing him accordingly. For other orders relating to seizing corn see above, pp. 211, 212, 415.

for private men of war, against the French King, or his subjects, in both which instructions there are contained these two following Articles :

That the same goods and merchandizes, and also corn of all sorts laden in the ships belonging to neuter towns bound to the enemy's country are to be reputed contraband.

That corne laden in the ships of any neuter may be seized, whithersoever it be bound.

And whereas we have thought fitt to revoke and determine the directions thereby given for the seizing of corne ; Our will and pleasure is that in all the instructions to be hereafter issued to the commanders of our men of warr, and to such as shall have commissions or letters of marque as aforesaid, you cause the last of the said two Articles to be wholly omitted, and the other to be altered, leaving out the words ' and also corne of all sorts,' and continuing the rest of the Article as it was before in the words following :

That the same goods or merchandizes laden in the ships belonging to neuter towns bound to enemies' country are to be reputed contraband.

And our further pleasure is that you cause these our directions to be signified to all such as have received our instructions above mentioned, and have authority to act in pursuance of them, to the end that for the future they may observe the orders hereby given, anything in our said former instructions to the contrary notwithstanding. And for so doing this shall be your warrant.

[Dated 14th June 1693.]

1704. Instructions for H.M. ships against France and Spain, 16th Nov.—*P.C. Register* 80, f. 198.

His Royal Highness Prince George of Denmark &c.

I do hereby require and direct the captains of Her Majesty's ships of war to put my following instructions carefully in execution, to prevent all undue intercourse with the enemy, or their being furnished with navall stores :

Arts. 1, 2, and 3 are the same as Arts. 3, 4, and 5 of 1704 ; and Arts. 4, 5, 6, and 7 the same as Arts. 6, 7, 9, and 10 of 1693, except that in Art. 7 the provision as to not molesting Swedish ships sailing before a named date are omitted, and the words ' or in case there be just cause of suspicion ' are added.

1704. Instructions for privateers against France and Spain, 23rd Dec. 1704.—*Adm. Sec. In Letters* 5249, f. 454, and *P.C. Register* 80, f. 231.¹

1. That it shall be lawfull for the said merchants and others authorized by letters of marque or commissions for private men of war to sett upon by force of arms and subdue and take the men of war, ships, and other vessels whatsoever, as also the goods, moneys, and merchandizes belonging to France and Spain, their vassalls and subjects, and others inhabiting within any their countrys, terri.orys, or dominions, and

¹ Cf. Proclamations of 31st May and 6th Aug. 1702 as to sharing prize, gun money ; captors to take the whole of their prizes ; *Adm. Sec. In Letters* 5249, ff. 310, 321.

such other ships, vessells, and goods as are or shall be liable to confiscation pursuant to the treatys between Us and other Princes, States, and Potentates, but so that no hostility be committed, nor prize attacked, seized, or taken within the harbours of Princes or States in amity with Us, or their rivers or roads, within shott of their cannon.

2. Nevertheless We, in conjunction with Our allies, the States Generall of the United Provinces, being willing to encourage ours and their subjects in their intercourse and correspondence with such of the Spanish nation in the West Indies as shall be inclined to acknowledge the title and sovereignty of Charles the Third, King of Spain, with whom we are in friendship and alliance, to the intent that such mutuall intercourse and correspondence may be beneficial, as well to our subjects and allies as to the Spaniards in America, have thought fitt and do hereby direct that no injury, violence, spoil, or molestation whatsoever shall be done or committed by any privateer or merchant ship having letters of marque upon or within the main land of the continent or of the islands or plantations belonging to the Spaniards in America, or against any of our subjects, or subjects of the States Generall, or any of them, their ships, vessells, or goods, that shall be found coming to or going from any port or place in the Spanish West Indies, being for the proper account and risque of our subjects or the subjects of the States Generall respectively. Provided that no goods whatsoever belonging to the inhabitants of France, or its vassalls, or any others inhabiting within the dominions or territorys of that Crown, nor any contraband goods, stores, or provisions of war be permitted to be carried to any Spanish

plantation in any ship whatsoever ; but they may be, and are hereby declared to be lyable to seizure and confiscation as before the giving this instruction. Provided also that the instruction be so understood as that it may and shall be lawfull for any privateer or merchant ship having letters of marque to attack, take, and possess themselves of any Spanish ship, vessell, or gallion, either on the main sea or in fresh waters, or in any port, bay, creek, or harbour in America, as well as elsewhere, and to seize and bring away such ship, vessell, or gallion, and all treasure, goods, and merchandizes which may be found on board such ship, vessell, or gallion.¹

[Arts. 3, 4, 5, 6, 7, 8, and 9 are similar to Arts. 3, 4, 5, 6, 7, 9, and 10 of 1693 ; ' France or Spain ' being substituted for ' France ' in Arts. 3, 4, and 5 of 1693 ; and the words ' and there being no suspicion of there being naval stores on board ' are inserted after ' hereunto annexed ' in Art. 8 ; the wording of Art. 9, as to Swedish ships, is different.]

10. That all ships of Denmarke and Sweden, or of neuter towns trading to or from France, and being lett out to freight, shall be furnished with charter parties.

11. If any Danish ship be mett with at sea, or upon the coast, by any privateer, such privateer shall send his boat on board such Danish ship, with only two or three of his company, to whom the master of such Danish ship shall shew his passport, certificate, and papers on board.

12. That the said merchants and others shall bring such ships and goods as they shall so seize

¹ See *P.C. Register* 80, f. 108, a similar Order of 4th May 1704.

and take to such port of this our realm of England as shall be most convenient for them, in order to have the same legally adjudged in our high court of Admiralty. But if such prize be taken in the Mediterranean, within the Streights of Gibraltar, then the captor may, if he doth not think fit to bring the same to some port of England, carry such ship and goods into the port of such Princes and States as are in allyance or amity with us. And if such ships and goods be taken in the West Indies or America, then the captor may, if he doth not think fit to bring the same to some port of England, carry such ships and goods into any of our ports in any of our islands or plantations there. And if such ship and goods be taken in the East Indies, or in any place beyond the Cape of Good Hope, then the captor may, if he doth not think fit to bring the same to some port of England, carry such ship and goods into any port or place where any English factory is established.

[*Arts. 13, 14, and 15 are the same as Arts. 12, 13, and 14 of 1693.*]

16. That after condemnation of any prize it shall and may be lawfull for the said merchants and others to keep such and so many ships, vessells, goods, and merchandizes as shall be condemned unto them for lawfull prize in their own possession, to make sale or dispose thereof in open markett, or otherwise, to their best advantage in as ample manner as at any time heretofore has been accustomed in cases of letters of marque or of just prize in time of war, other than wrought silks, Bengalls, and stuffs mixt with silk or herba of the manufacture of Persia, China, or East India, or callicoes painted, dyed, printed, or stained there, which are to be deposited for expor-

tation, according to the direction of an Act¹ made in the 11th of the late King William, entitled an Act for the more effectually employing the poor by encouraging the manufactures of this kingdom; and that it shall be lawfull for all manner of persons, as well our subjects as others, according to law, to buy the said ships, vessells, goods, and merchandizes so taken and condemned for lawfull prize, without any damage or molestation to ensue thereupon to the said buyers or any of them by reason of the contracting or dealing for the same.

17. That if any ship or vessell belonging to Us, or any of our subjects, or to our allies or their subjects, shall be found in distress by being in fight, sett upon or taken by the enemy, the captain, officers, and company, who shall have such letters of marque or commissions as aforesaid, shall use their best endeavours to give aid and succour to all such ship or ships, and shall to the uttermost of their power labour to free the same from the enemy.

[Arts. 18 to 21 are the same as Arts. 16 to 19 of 1693, except that in Art. 21 the words of Art. 19 of 1693 requiring privateers not to merchandize are omitted.]

22. That such merchants, commanders of ships, and others who shall obtain such letters of marque or commissions as aforesaid shall also from time to time, upon due notice being given them, observe all such other Instructions and orders as Her Majesty shall think fitt to direct for the better carrying on of this service.

[Arts. 23 and 24 are the same as Arts. 21 and 22 of 1693.]

¹ 11 Will. III, c. 10.

1706. Instructions against France and Spain, 2nd May.—*P.C. Register* 81, f. 186.

All the twenty-four Articles of these Instructions are in substance identical with those of 1702, except Art. 9, to which are added the words 'in case they carry any goods declared to be contraband by the 11th Article of the treaty' of 1661, and the two following Articles :

2. Nevertheless all ships and vessels bound to or coming from any port of France or Spain, which shall be furnished with proper passes from us or from the States General of the United Provinces, respectively, shall not be brought up or molested, so as they are pursuing the voyages described in such passes, according to the limitations therein mentioned, and so as they do not carry any contraband goods.

5. That no goods laden in Dutch ships shall be deemed contraband other than such as are declared so to be by the treaty marine concluded between England and Holland in the year 1674.

1709. An Order in Council directing Instructions to be issued for the seizure of corn bound to an enemy port issued in this year (see above, pp. 211, 212), but the Instruction has not been found.

1718. Instructions for privateers against Spain, 16th Dec.—*Adm. Sec. In Letters* 3674.

The fourteen Articles of these Instructions are practically the same as Art. 1 and Arts. 12 to 14 and 16 to 24 of 1702, except that in Art. 2 our high court of Admiralty is here called 'of England,' and all the sub-

sequent words in Art. 12 of 1702 are omitted ; in Art. 8 the concluding words of the earlier Art. 18, ' against our declared enemy,' are omitted ; and in Art. 11 (Art. 21 of 1702) the following words are added : ' but that, besides the colours borne usually by merchant ships, they do wear a red jack, with the Union jack described in the canton at the upper corner thereof near the staff,' and the words of 1702 as to the presence of men of war and salutes are omitted. Art. 5 is as follows :

5. That the said merchants, commanders of ships, and others who shall obtain the said letters of marque and reprizals as aforesaid for private men of war, shall not do or attempt anything against the true meaning of any Article or Articles, Treaty or Treaties, depending between us and any of our allies ; and shall not do or attempt anything against our loving subjects, or the subjects of any Prince or State in amity with us, nor against their ships, vessels, or goods, but only against the king of Spain, his vassals and subjects, and others inhabiting within his countries, territories, or dominions, their ships, vessels, and goods.

1721. The King grants to privateers his tenths of prizes.—*Adm. Sec. Out Letters* 1052, f. 178.

His Majesty having been pleased by his Order in Council dated the 22nd of this month to direct that you should prepare the draught of a declaration, or such instrument as may be necessary for the signification of His Majesty's pleasure that merchant ships belonging to this kingdom, which have had or shall have letters of marque

or reprizals granted to them, shall, without deducting the tenth part of the value of such prizes as have or may be taken by them as perquisites of the Admiralty, have the same entire, to be disposed of according to the contracts or agreements which have or shall be made between the owner or owners of such ships having letters of marque or reprizals and the companys belonging to them, unless it be wrought silk or herba of the manufacture of Persia, China, or East India, or calicoes painted, dyed, printed, or stained there. We send you herewith a copy of the said Order in Council, and in pursuance of His Majesty's pleasure direct and require you to cause a draught of a declaration, or other proper instrument, to be forthwith prepared accordingly, which you are to present to the lords of His Majesty's most honourable Privy Council for His Majesty's royal approbation. Given under our hands this 25th March 1720.¹

[Addressed to Sir Nathaniel Lloyd, the advocate general, and signed by four of the Lords.]

1739. Instructions for privateers against Spain, 20th July.—*Adm. Ct. Miscellanea* 91.²

The fourteen Articles of these Instructions correspond with Arts. 1 and 12 to 24 of those of 1702. In Art. 1 the reference to treaties is omitted; in Art. 2 is added

¹ A similar Order issued 19th May 1720; *P.C. Register* 86, f. 408.

² War was not declared until 19th Oct. and new Instructions (probably identical with these) were prepared and approved 22nd Nov. See *P.C. Register* 95, ff. 265, 368, 370, 406.

' or before the judges of such other Admiralty court as shall be lawfully authorized in our dominions,' and the words of the earlier Instructions as to captures in the Mediterranean and the East and West Indies are omitted ; Art. 5 (= Art. 15 of 1702) is shorter, and there is no reference to freedom of the seas ; Art. 7 has immaterial changes of wording. Art. 11 (= Art. 21 of 1702) runs as follows ; it forbids privateers ' to wear any jack, pendant, or any other ensign or colours usually borne by our ships ; but that besides the colours born usually by merchant ships they do wear a red jack with the Union jack described in the canton at the upper corner thereof near the staff,' omitting the words as to the presence of men of war and as to salutes.

1744. Instructions against France, 29th March.—*Adm. Ct. Letter of Marque Declarations* 4, f. 9.

The sixteen Articles of these Instructions, with a few verbal differences, are the same as those next printed of the following June, except that Arts. 3 and 5 of the latter are additions.

1744. Instructions to privateers against France and Spain, 18th June.—*Adm. Ct. Letter of Marque Declarations* 22, f. 4.¹

1. [Same as Art. 1 of 1702.]
2. That all ships carrying any contraband goods to France and Spain shall be seized as prize to his Majesty.
3. That no goods laden in Dutch ships shall

¹ The original sealed Instructions, as also those of 29th March 1794, against France alone are in *Adm. Ct. Miscell.* 92.

be deemed contraband other than such as are declared so to be by the treaty marine concluded between England and Holland in the year 1674.

4. That all captains and commanders of ships who have, or shall have, letters of marque or commissions for private men of war, are hereby required and enjoined to observe carefully and religiously the terms of the treaty marine between his late Majesty, King Charles the Second, and their High Mightinesses the States General of the United Netherlands, concluded at London the first day of December 1674, old style, and confirmed by subsequent treaties. And they are hereby required to give security, pursuant to the Tenth Article of the aforesaid treaty marine for their due performance thereof.¹

5. [*Same as Art. 6 of 1702, except that contraband goods are prizable in Swedish as well as Danish ships.*]

6. [*Same as Art. 12 of 1702, except that the provisions as to captures in the East and West Indies and America are omitted.*]

7. [*Same as Art. 13 of 1702, with the addition :*]
'or the judge of such other Admiralty courts within our dominions as shall be lawfully authorised as aforesaid, or such as shall be lawfully commissioned in that behalf.'

[*Arts. 8 to 14 are the same as Arts. 14 to 20 of 1702.*]

[*Art. 15 same as Art. 11 of 1716.*]

[*Arts. 16, 17, and 18 same as Arts. 22, 23, and 24 of 1702.*]

¹ This Article was inserted in pursuance of an Order of 30th April ; *Adm. Ct. Letter of Marque Decl. 4, f. 101.*

1744. Additional instructions as to prisoners taken in prizes ; ransoming prizes ; and privateers' journals.—*Adm. Sec. Out Letters* 1054, f. 284.

GEORGE R.

1. That all captains or commanding officers of privateers do send an account of and deliver over what prisoners shall be taken on board any prizes to the commissioners appointed for the exchange of prisoners of war, or the persons appointed in the sea port towns to take charge of prisoners ; and that such prisoners may be subject only to the orders, regulations and directions of the said commissioners ; and that no commander or other officer of any man of war or private ship of war do presume upon any pretence whatsoever to ransom French or Spanish prisoners.

2. That no commander of any man of war or privateer shall ransom any ship taken as prize, when such ship may be conveniently brought into some port of his Majesty's dominions ; and in case any ship taken as prize shall be ransomed, the reasons for so doing, and the conditions of such ransom shall be transmitted to the judge of the Admiralty, and preparatory examinations upon standing interrogatories shall be taken, as in all cases of prize ; and condemnation of such ransom shall be had according to the ancient course and practice of the Admiralty ; and in case any commander of any privateer or merchant ship having a letter of marque shall act contrary to their several Instructions, such commander shall forfeit his commission to all intents and purposes, and shall, together with his bail, be

proceeded against according to law, and be condemned in costs and damages.

3. That all commanders of privateers or merchant ships that shall have letters of marque shall by every opportunity send exact copies of their journals to the Secretary of the Admiralty, and proceed to the condemnation of their prizes as soon as may be, and without any delay.

By his Majesty's command
HARRINGTON.

1756. Instructions against France, 5th June.
—*Adm. Ct. Prize Papers* 256, the Young Eagle.¹

[*Art. 1 same as Art. 1 of 1702.*]

2. That all ships carrying soldiers, arms, powder, ammunition, or any other contraband goods, to any of the territories, lands, plantations, or countries of the French king, shall be seized as prizes.

[*Arts. 3 to 12 are, with slight verbal changes, the same as Arts. 12 to 21 of 1702.*]

13. That all captains or commanding officers of privateers do send an account of, and deliver over, what prisoners shall be taken on board any prizes, to the commissioners appointed, or to be appointed, for exchange of prisoners of war, or the persons appointed in the sea port towns to take charge of prisoners; And that such prisoners be subject only to the orders, regulations, or directions of the said commissioners. And that no commander or other officer of any man of

¹ These are from the printed copy, with which, apparently, each privateer was supplied.

war, or private ship of war, do presume upon any pretence whatsoever to ransom any prisoners.

14. That no commander of any man of war or privateer shall ransom any ship taken as prize, when such ship may conveniently be brought into some port of his Majesty's dominions. And in case any ship taken as prize shall be ransomed, the reasons for so doing and the conditions of such ransom shall be transmitted to the judges of the Admiralty; and preparatory examinations upon the standing interrogatories shall be taken, as in cases of prize; and a condemnation of such ransom shall be had, according to the ancient course and practice of the Admiralty. And in case any commander of any privateer or merchant ship, having a letter of marque, shall act contrary to their several instructions, such commander shall forfeit his commission to all intents and purposes, and shall, together with his bail, be proceeded against according to law, and be condemned in costs and damages.

15. That all commanders of privateers or merchant ships that shall have letters of marque, shall by every opportunity send exact copies of their journals to the Secretary of the Admiralty, and proceed to the condemnation of their prizes as soon as may be, and without delay.

[Arts. 16, 17, and 18 are the same as Arts. 22, 23, and 24 of 1702.]

1756. Instructions against France, 5th Oct.
—*Adm. Ct. Prize Papers* 256.¹

Whereas complaint has been made unto us by order of our good brother, the Catholick king,

¹ Young Eagle papers.

that some of the private ships of war belonging to our subjects have, since the declaration of the present war with France, seized and brought into port certain Spanish ships, without sufficient cause, and contrary to the stipulations of the treaty made between the two crowns in 1667; We do strictly forbid all commanders of such ships and vessels as may have letters of marque or commissions for private men of war to molest the persons, or interrupt the navigation of the subjects of the crown of Spain, or to seize or detain any ships or vessels belonging to them, on any pretence whatever, unless on account of contraband goods and merchandize on board the same. And we do further enjoin and command all those who may be in any wise herein concerned to observe all and every part of the treaty abovementioned in such manner as to avoid and prevent all disputes with the officers, commanders, and subjects of his Catholick Majesty.

1762. Instructions to privateers against Spain, 4th June.—*Adm. Sec. Out Letters* 1056, f. 465.¹

GEORGE R.

[*Arts. 1 to 15 are the same as Arts. 1 to 15 of 1756.*]

16. That no commander of any man of war or privateer do upon any pretence molest, detain,

¹ The original sealed Instructions are in *Adm. Ct. Miscell.* 90. This Instruction was reissued in 1779, with an injunction not to take any prize out of a Turkish port; *P.C. Register* 123, f. 578.

or imprison the persons of any of the subjects of the Ottoman Empire, nor seize or detain as prize their ships or effects in the Levant seas, or any other part of the ocean, under pain of our highest displeasure and such punishment as by law may be inflicted. And that the commanders of men of war and privateers do carry the subjects of the Ottoman Empire and their effects which they shall find on board Spanish ships seized in the Levant seas, bound to or from any port in Egypt, or to or from one port to another in the Levant seas, either to the nearest port in Egypt, or to or from one port to another in the Levant seas, either to the nearest port in Turkey or Egypt, or their destined port, and there land such persons and such effects as shall manifestly appear to belong to the Turks; and that no effects or merchandizes taken on board any Spanish ship which shall be claimed by any subject of the Grand Signior as being their property shall be proceeded against for condemnation in any other court but the high court of Admiralty of England; and that notice be given of the said proceeding to the Turkey Company, to the end that care may be taken that a proper and legal defence may be made on behalf of the claimants, subjects of the Grand Signior.¹

[*Arts. 17, 18, and 19 are the same as Arts. 22, 23 and 24 of 1702.*]

¹ This had been issued as an additional Instruction on 28th June 1756.

1762. Instructions for privateers against France, 4th June. — *Adm. Sec. Out Letters* 1056, f. 481.

[*These are the same as those of even date against Spain, with one addition¹ as follows :*]

17. Whereas our good brother, the King of the two Sicilies, has represented to us that many inconveniencies may arise from hostilities being committed in the Gulph of Naples by privateers belonging to either of the Powers at war, and that the intercourse and supply of the city of Naples, (the capital of his dominions and the place of his royal residence), may be greatly interrupted thereby ; His Sicilian Majesty, having also communicated to us a copy of the orders which the court of France has given to the commanders of their privateers, and other ships, relating to this affair ; We, being desirous to give all marks in our power of friendship and regard for the court of Naples, do hereby strictly enjoin the commanders of all ships and vessels that have or may have letters of marque, or commissions for private men of war, to abstain from any act of hostility against the ships and subjects of the French king within the Gulph of Naples during the present war ; Provided that all privateers and other French ships do on their part strictly observe the orders that have been given them to that effect.

¹ This had been issued as an Instruction on 11th June 1757 ; *Adm. Sec. Out Letters* 1055, f. 478.

NOTE AS TO THE RULE OF 1756

Amongst the Admiralty court records is a small MSS. volume of reports, or rather notes, of cases arising out of the war of 1744-5. The name of the reporter does not appear, but from internal evidence it is clear that he was an advocate engaged in some of the cases. Twenty-six cases are reported, and besides these twenty others, of earlier date, are mentioned as having been cited as authorities. In at least one of the cases reported, the *Ceres*, the rule of 1756, as to the illegality of a neutral carrying on in time of war the trade of a belligerent, which is closed to the neutral in time of peace, is treated as already settled law. The note of the judgment in the *Ceres* is as follows :

Court. Good deal of reason to think this is a colourable claim. Claim, 19th June, the day the ship was condemned. French, English, and Dutch have an exclusive trade to their colonies. Article of treaty, eight months allowed. Dismiss the claim.

The treaty here referred to was that of Utrecht, and the 'eight months' was one of the terms allowed by the treaty for its coming into operation with reference to captures made in different parts of the world. In the *Ceres*, the ship captured was French, and the voyage was from Martinico to Nantes ; the claim was to part of the cargo, by a Dutchman.

Owing to the re-arrangement of the records now in progress no definite reference to this volume can at present be given.

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